Proceedings of the Council

OF THE

LIEUT.-GOVERNOR OF BENGAL

FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS.

Index to Vol. XXII.

JANUARY TO DECEMBER, 1890.

Published by Authority of the Council.

Calcutta:
PRINTED BY THE BENGAL SECRETARIAT PRESS.

1891

INDEX TO THE PROCEEDINGS

OF THE

COUNCIL OF THE LIEUT.-GOVERNOR

FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS

FOR THE YEAR 189

A.

ACT II (B.C.) OF 1866. AMENDMENT OF—
See *Calcutta and Suburban Police Superannuation Funds Bill.*

„ IV „ OF 1866. AMENDMENT OF—
See *Calcutta and Suburban Police Superannuation Funds Bill.*

„ V „ OF 1870 REPEAL OF—
See *Calcutta Port Bill.*

„ IV „ OF 1879. REPEAL OF—
See *Calcutta Port Bill.*

„ IV „ OF 1880. REPEAL OF—
See *Calcutta Port Bill.*

„ V „ OF 1880. AMENDMENT OF—
See *Bengal Vaccination Bill.*

„ I „ OF 1881. REPEAL OF—
See *Calcutta Port Bill*

„ II „ OF 1883 REPEAL OF—
See *Calcutta Port Bill.*

„ II „ OF 1886. REPEAL OF—
See *Calcutta Port Bill*

„ II „ OF 1887. AMENDMENT OF—
See *Bengal Vaccination Bill*

„ III „ OF 1887. REPEAL OF—
See *Calcutta Port Bill.*

ADJOURNMENTS OF COUNCIL. See *Council.*

ADVOCATE-GENERAL OF BENGAL. See *Paul, Hon'ble Sir Charles.*

INDEX.

PAGE.

'. T.—
lcutta Port Bill 41, 67, 83, 89
:olete Enactments Bill 98

appointed to Select Committee on—
Vaccination Bill 3

B.

, HON'BLE SIR STEUART COLVIN. See *Lieutenant-Governor of Bengal*

BENGAL COUNCIL RULES. See *Rules for the Conduct of Business*

BENGAL VACCINATION BILL.
Introduced and read in Council 3
Referred to Select Committee . . . . . *ib.*
Report of Select Committee presented 15
" " considered 17
Settlement of clauses . . . . . *ib.*
Bill passed . . . . . *ib.*

BUSINESS BEFORE THE COUNCIL. STATEMENT OF THE COURSE OF—
The President 97

C.

CALCUTTA PORT BILL.
Consideration of Report of Select Committee postponed 4
" " " further postponed 14, 18
Report of Select Committee considered 21
Settlement of clauses . . . . . *ib.*
Amendments proposed and adopted 23-24, 27-58, 59
" " and negatived 24-58
" " and withdrawn 58
Further consideration of settlement of clauses 61, 79
Amendments proposed and adopted 80, 80-94
" " and withdrawn 62-80
Bill passed 95

CALCUTTA AND SUBURBAN POLICE SUPERANNUATION FUNDS BILL.
Report of Select Committee considered 3
Settlement of clauses . . . . . *ib.*
Amendment proposed and adopted 4
Bill passed 14

COUNCIL OF THE LIEUTENANT-GOVERNOR OF BENGAL FOR MAKING LAWS AND REGULATIONS.
Adjournments of— 5, 16, 19, 59, 78, 99
" " *sine die* 95
Divisions of— 14, 58
Meetings of— 1, 7, 17, 21, 61, 79, 97

PAGE.

CROFT, HON'BLE SIR ALFRED—
Calcutta Port Bill 39, 41
Rules for the Conduct of Business 9, 13

D.

DEBATES IN COUNCIL ON—
Calcutta Port Bill 21-59, 61-78, 79-94
Rules for the Conduct of Business 7-14

DIVISIONS OF COUNCIL. See *Council.*

E.

ENACTMENTS. See *Obsolete Enactments Bill.*

G.

GHOSE, HON'BLE DR. RASH BEHARY—
Calcutta Port Bill 77, 79, 89

H.

HARRISON, HON'BLE SIR HENRY—
Bengal Vaccination Bill 3, 4
Calcutta Port Bill . . . 21, 24, 26, 27, 59, 61, 62, 76, 79, 80, 93, 94, 95
Calcutta and Suburban Police Superannuation Funds Bill 3, 14
Rules for the Conduct of Business 11, 13

HARRISON, HON'BLE SIR HENRY, appointed to Select Committee on—
Bengal Vaccination Bill 3

L.

LIEUTENANT-GOVERNOR OF BENGAL (HON'BLE SIR STEUART COLVIN BAYLEY)—*President.*
Calcutta Port Bill 4, 14, 18, 27, 52, 77
Rules for the Conduct of Business 2, 7, 12, 13
Statement of the Course of Business 97
Suspended Rules in case of Calcutta Port Bill 95

M.

MEETINGS OF COUNCIL See *Council.*

MEMBERS. See *New Members.*

MOORE. HON'BLE C. H.—
Calcutta Port Bill 23, 24, 26, 51, 57, 64, 87

N.

NEW MEMBERS—
Hon'ble Mr. H. J. S. Cotton (took his seat in Council on the 13th December, 1890.) 97
Hon'ble Mr. A. H. Wallis (took his seat in Council on the 13th December, 1890.) 97

NOLAN, HON'BLE P.—
Calcutta Port Bill 38, 58, 65, 86
Rules for the Conduct of Business 13

PAGE.

NOLAN, HON'BLE P., appointed to Select Committee on—
Bengal Vaccination Bill 3

O.

OBSOLETE ENACTMENTS BILL.
Leave to introduce 98

P.

PAUL, HON'BLE SIR CHARLES—
Calcutta Port Bill 41, 47, 70, 92
Rules for the Conduct of Business 1, 7, 12, 14

PEACOCK, HON'BLE F. B.—
Calcutta Port Bill 31

POLICE SUPERANNUATION FUNDS. See *Calcutta and Suburban Police Superannuation Funds Bill.*

PORT OF CALCUTTA. See *Calcutta Port Bill.*

PRESIDENT. See *Lieutenant-Governor of Bengal.*

R.

RASH BEHARY GHOSE. See *Ghose.*

RULES OF THE COUNCIL. Suspension of—
Calcutta Port Bill 93

RULES FOR THE CONDUCT OF BUSINESS.
Report of Select Committee presented 1
" " considered 7
Settlement of clauses . . . . . *ib.*
Amendments proposed and adopted 8-13, 13-14
Bill passed 14

S.

SELECT COMMITTEES—

	Appointed.	Report presented.	Report considered.
	Page.	Page.	Page.
Bengal Vaccination Bill	3	15	17
Calcutta Port Bill	...	...	31
Calcutta and Suburban Police Superannuation Funds Bill	...	...	3
Rules for the Conduct of Business	...	1	7

PAGE.

SUBURBAN POLICE. See *Calcutta and Suburban Police Superannuation Funds Bill.*

SUPERANNUATION FUNDS. See *Calcutta and Suburban Police Superannuation Funds Bill.*

SUSPENSION OF RULES. See *Rules of the Council*

V.

VACCINATION. See *Bengal Vaccination Bill*

E. D'S.—Reg. No. 336J—800—4-5-91.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., Cap. 67.

THE Council met at the Council Chamber on Saturday, the 4th January, 1890.

Present:

The HON'BLE SIR STEUART COLVIN BAYLEY, K.C.S.I., C.I.E., Lieutenant-Governor of Bengal, *presiding.*

The HON'BLE SIR CHARLES PAUL, K.C.I.E., *Advocate-General.*

The HON'BLE F. B. PEACOCK.

The HON'BLE P. NOLAN.

The HON'BLE T. T. ALLEN.

The HON'BLE SIR HENRY HARRISON, KT.

The HON'BLE SIR ALFRED CROFT, K.C.I.E.

The HON'BLE DR. MAHENDRA LAL SIRCAR, C.I.E.

The HON'BLE C. H. MOORE.

The HON'BLE H. PRATT.

The HON'BLE SHAHZADA MAHOMMED FURROKH SHAH.

The HON'BLE DR. RASH BEHARY GHOSE.

The HON'BLE RAJA RAMESHWAR SING BAHADUR.

RULES FOR THE CONDUCT OF BUSINESS.

THE Hon'ble Sir Charles Paul presented the Report of the Select Committee appointed to consider and amend the Rules for the Conduct of Business at Meetings of the Council.

He said:—"The Council will see from the report the amendments which have been made. The rules have been redrafted in what we considered a more convenient form. The only material alterations are those mentioned in the report, to two of which I shall refer. One of these is Rule 31, where it is provided that when a Bill is introduced, it shall, together with the Statement of Objects and Reasons, be published in the English and Vernacular languages in the official gazettes of such parts of Bengal as are affected by the Bill. And on some subsequent occasion the member in charge of it shall make one or more of the following motions:—(*a*) that it be referred to a Select Committee, or (*b*) that

it be taken into consideration by the Council at some future day, or (*c*) that it be circulated for the purpose of eliciting opinions thereon.

"The amendment which we have made is this. We have provided in certain cases, whenever it may be unnecessary to refer a Bill to a Select Committee, that it may be taken into consideration by the Council. Occasions have arisen where a reference to a Select Committee was useless to provide for such cases. We have put in clause (*b*) of Rule 31.

"But inasmuch as it may be said that such a Bill should not be passed too summarily, we have provided that it shall be published with the Statement of Objects and Reasons, and as a rider upon that we have, as mentioned in the fifth paragraph of our report, provided, as a matter of further precaution, that the President shall have authority, upon a motion to consider a Bill being carried, to submit the Bill itself, or any part of it, section by section, to the Council; thus making the Council act the part of a Select Committee.

"Then another rule to which I wish to call attention is Rule 44. This is intended to meet the case which has occurred more than once of the passing of a Bill being postponed on account of some formal or trifling amendment having been made.

"I wish to point out another matter which came before the Select Committee. Under the Indian Council's Act the President has a casting vote. That provision was made a rule under our existing rules. The Members of the Select Committee thought that it did not come within the scope of a rule, and therefore what we propose to do (but which has been left out by mistake) is to add a foot-note indicating that the President has a casting vote under a particular section of the Indian Council's Act. This has only been done for the purpose of making the subject complete and calling attention to it.

"We have also provided that the right of the President to address the Council before putting the question should be indicated in specific terms, and have introduced a rule giving effect to that object. These are the principal amendments we have made."

HIS HONOUR the President said:—"This Report will be in the hands of Members to-day, and the Rules will be brought forward for passing at the next meeting of the Council. Under the rules we have yet to get the consent of the Government of India before they can come into force."

BENGAL VACCINATION BILL.

The Hon'ble SIR HENRY HARRISON introduced the Bill to amend the Bengal Vaccination Act, 1880, and Act II, 1887, and moved that it be read in Council.

He said:—"I explained at the last meeting the objects and measures of this Bill which are very much of a formal character."

The Motion was put and agreed to.

The Bill was read accordingly.

The Hon'ble SIR HENRY HARRISON also moved that the Bill be referred to a Select Committee, consisting of the Hon'ble Messrs. Nolan and Allen, and the Mover, with instructions to report thereon within one fortnight.

The Motion was put and agreed to.

CALCUTTA AND THE SUBURBAN POLICE SUPERANNUATION FUNDS BILL.

The Hon'ble SIR HENRY HARRISON moved that the Report of the Select Committee on the Bill to consolidate the Calcutta and the Suburban Police Superannuation Funds be taken into consideration in order to the settlement of the clauses of the Bill.

The Motion was put and agreed to.

The Hon'ble SIR HENRY HARRISON also moved that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee.

He said:—"I wish to make one remark on the present occasion. The Select Committee in their report said, that they struck out so much of section 2 as made the provisions of that section applicable to the Clerk appointed to manage the Superannuation Fund.

"Since then I have received a memorial from the Clerk drawing attention to the hardship to him of losing his pension, but so long a time has elapsed since the report of the Select Committee was prepared that I have not been able to remember why we left it out. I do not think we had the intention of depriving the Clerk of his salary or pension.

[*Sir Henry Harrison.*]

"My recollection is, that we considered the wording of section 2 sufficient without making any particular reference to the Clerk. The words of the section are:—'The Police Superannuation Funds * * * * shall be consolidated, and shall form one Police Superannuation Fund, and shall be applied from time to time to the payment of the charges incurred in the control and management of the said Fund.' That is the first purpose to which the revenues of the Fund are to be applied. The section goes on to say—'and of such superannuation or retiring allowances or gratuities as may be ordered by the Local Government at any time to any Police Officer of the Calcutta or Suburban Police Force,' and the words followed—'or to any person employed as a Clerk to manage the said Fund.' That seemed to the Select Committee rather confused, because the first purpose to which the revenues are to be applied, viz., the management of the Fund, is quite different from the second purpose, which is the payment of pensions and gratuities to members of Police Force for which the Fund primarily exist. Therefore to put the Clerk in the same category as the Police Force seemed rather out of place. The Clerk rather came under that portion of the section which made the revenues applicable to the payment of the charges incurred in the control and management of the Fund.

"But as there may be some doubt, I will ask the Council to insert such words as will remove all difficulty, and therefore I move that the words 'including salaries, pensions or gratuities' be inserted after 'charges' in line 7 of section 2, making the wording run thus: 'and shall be applied from time to time to the payment of the charges, including salaries, pensions or gratuities, incurred in the control and management of the said Fund.' That, I believe, will make the intention quite clear."

The Motion was put and agreed to.

The Hon'ble Sir Henry Harrison's motion that in line 7 of section 2, after the word "charges" the words "including salaries, pensions or gratuities" be inserted, was also put and agreed to.

CALCUTTA PORT BILL.

HIS HONOUR the President said:—"The next item of business on the list is to consider the Report of the Select Committee on the Bill to consolidate

and amend the law relating to the Port of Calcutta, and to the appointment of Commissioners for the said Port. On that subject the Hon'ble Mr. Moore has rather an important amendment to propose; and as the matter is still under the consideration of the Chamber of Commerce, he asks that the consideration of this Bill be postponed. I am sure the Council will readily accede to the Hon'ble Member's request, and I hope we shall be able to discuss the Bill at our next meeting."

The consideration of the Report was postponed.

The Council adjourned to Saturday, the 11th January, 1890.

CALCUTTA;
The 7th January, 1890.

C. H. REILY,
Assistant Secretary to the Govt. of Bengal,
Legislative Department.

Reg. No. 744G—300—11.1.90.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., Cap. 67.

THE Council met at the Council Chamber on Saturday, the 18th January, 1890.

Present:

The HON'BLE SIR STEUART COLVIN BAYLEY, K.C.S.I., C.I.E., Lieutenant-Governor of Bengal, *presiding*.
The HON'BLE SIR CHARLES PAUL, K.C.I.E., *Advocate-General*.
The HON'BLE F. B. PEACOCK.
The HON'BLE P. NOLAN.
The HON'BLE T. T. ALLEN.
The HON'BLE SIR HENRY HARRISON, KT.
The HON'BLE SIR ALFRED CROFT, K.C.I.E.
The HON'BLE DR. MAHENDRA LAL SIRCAR, C.I.E.
The HON'BLE C. H. MOORE.
The HON'BLE H. PRATT.
The HON'BLE SHAHZADA MAHOMMED FURROKH SHAH.
The HON'BLE DR. RASH BEHARY GHOSE.
The HON'BLE RAJA RAMESHWAR SING BAHADUR.

RULES FOR THE CONDUCT OF BUSINESS.

THE HON'BLE SIR CHARLES PAUL moved that the Report of the Select Committee appointed to consider and amend the Rules for the Conduct of Business at the Meetings of the Council be taken into consideration.

The Motion was put and agreed to.

The HON'BLE SIR CHARLES PAUL also moved that the Rules be considered for settlement in the form recommended by the Select Committee.

The Motion was put and agreed to.

HIS HONOUR THE PRESIDENT said:—"Before putting the next question to the vote, I wish to say a few words. I am sure we are much indebted to the Select Committee for the care they have taken in considering these rules for the conduct of business.

[*The President.*]

"In going through the details there is only one point which struck me, on which I thought an alteration might possibly be made; and about that, as I am not quite sure I have understood the Rules correctly, I should like to have the opinion of the learned Advocate-General, or any other legal Member of the Council. It is a point which concerns me as President.

"In Rule 25 it is stated that 'when an amendment upon any motion is moved, or when two or more such amendments are moved, the President, when taking the sense of the Council thereon, shall read the terms of the original motion and of the amendment or amendments proposed.' So far it is all right, and I have no objection to it.

"Then the Rule goes on to say, 'and before putting any other question, shall put the question that the original motion shall stand without amendment.' After that it says:—'If that question is decided in the affirmative, the motion shall be put to the vote without amendment;' and in Rule 26 it says: 'When any one amendment is affirmed, the question shall be put to the vote and amended accordingly.'

"Now, if I have read this rule correctly, it imposes upon the President the necessity of first taking the opinion of the Council not on any one of the amendments, but upon the motion as it originally stood; that is to say, on a section of a Bill probably as amended by a Select Committee. In nine cases out of ten it would be that.

"If there is a question which strongly divides public opinion, we shall find, as a matter of practice, that a Select Committee generally takes a view which is a mean between two extremes. Let us say as an illustration, though it is not likely to happen, that a Select Committee recommends that a certain appointment shall carry a salary of Rs. 500 a month. That would probably be the mean between two extremes—one extreme being that the appointment shall not be a paid appointment at all, and another extreme that the appointment shall be paid Rs. 1,000 per mensem. If I have understood this rule correctly, I shall first have to put the motion to the Council that the pay of the appointment shall be Rs. 500. The effect of that, of course, would be to combine against that motion the advocates of the two extremes that the appointment shall not be paid, and that it shall be paid Rs. 1,000. Clearly the middle term would be thrown out. Whereas we know well from our own experience that when either of the extreme parties find that they

cannot have their own way, they would much rather adopt the middle term than that the opposite extreme party shall have their way.

"If, on the other hand, it is at the discretion of the President to put any one of the amendments or the original term first as he chooses, it will then give an opportunity of taking the opinion of the Council as to the views of the two extreme parties without forcing them to combine against the middle term. But if you begin by voting upon the middle term, and then go to the extremes, if the two combine first against the one, and then against the other, you will be left in a dilemma, out of which you cannot possibly extricate yourself, and there will be no means of getting the views of the two opposite parties upon the recommendation of the Select Committee.

"The proposal I shall make to you will be that in Rule 25 after the first word 'proposed,' the next ten lines be left out down to the words 'amended accordingly'; and that the following words be substituted for them, namely:—'It shall be in the discretion of the President to put first to the vote either the original motion or any of the amendments which may have been put forward.'

"I should like to have the opinion of gentlemen who are more accustomed than I am to the way of doing business at public meetings, and as to the legal effect of the words which I have proposed, before I ask you to accept them. I only throw this proposal out for discussion, and not as one which I ask you to accept on my authority."

The Hon'ble Sir Alfred Croft said:—"This proposal seems to me likely to get rid of a difficulty which is presented by the amended Rules as proposed by the Select Committee. These Rules (25 and 26) are a reproduction, without any change, of the existing rules. But they present certain inconsistencies which arise, as it seems to me, from the use of the word 'amendment' in two senses. It is well known that, in Parliamentary usage the word 'amendment' means one thing, while in the popular sense it means quite another. According to the usage of Parliament the word 'amendment' means a proposal to alter the terms of a question by adding certain words, by omitting certain words, or by substituting certain words for certain other words. And then in voting on that amendment, you are in fact not voting on any substantive question, but only upon the form that you wish that question to take on which you are afterwards to vote as soon as its terms are settled. Dr. Smith in his

'Handy Book on Public Meetings' describes the practice of Parliament as follows:—

'The object of an amendment is to change more or less the nature of the question before the House. . . . Thus, in voting upon any amendment, whichever way a man votes he does not help to carry any question, but only decides what the question shall be which he shall have an opportunity of carrying. He does not support the original question by voting against its being amended;'

to which it may be added that, in voting for an amendment, he may do so with the object of afterwards voting against the question as so amended.

"Such then is the Parliamentary usage. The popular meaning of the word 'amendment' as it is used in India, and often at public meetings in England, is different. A proposal is put before the meeting, and against that is brought forward a counter or rival proposal, which is called an amendment. Both are discussed together, and then at the close of the debate the Chairman puts one of the two propositions (generally the amendment) to the vote of the meeting. If it is carried, the substantive question is carried; if it is lost, the original proposition is put to the vote with a similar object and result. The two meanings of the term 'amendment' are perfectly clear and distinct, but the word seems to be used in these rules sometimes in one sense and sometimes in another.

"In Rule 23, which provides that 'any member may, by motion, propose for the determination of the Council any original question or any amendment of such question,' it is probable, though the point is not quite clear, that the intention is to employ the term 'amendment' in the Parliamentary sense, namely, an alteration of the terms of the question.

"Now go on to Rule 25 which says:—'When an amendment upon any motion is moved, or when two or more such amendments are moved, the President, when taking the sense of the Council thereon, shall read the terms of the original motion and of the amendment or amendments proposed, and before putting any other question shall put the question that the original motion do stand without amendment.' That clearly points to the Parliamentary usage. The President first puts the question, that the original motion do stand without amendment; in other words, he asks the Council to decide the form which the question shall take. Then the rule goes on to say:—'If that question is decided in the affirmative, the motion shall be put to the vote without amendment;' that is to say, when it has been decided that the form of the question

shall not be altered, the motion is to be put to the vote in the form in which it originally stood, and at this second stage it is put of course as a substantive motion.

"If, on the other hand, the rule goes on to say, the question that the original motion do stand without amendment is decided in the negative, that is, if it is decided that the question shall be amended, you would naturally expect that the next point to be settled would be the form the question should take. But that is not so, we find; for at this point the rule changes over to the popular method of procedure. It says:—'If not (that is, if there is to be an alteration in the terms of the question) the motion shall be put to the vote as proposed to be amended;' that is to say, the motion is at once to be put to the vote in its alternative form, and the voting on it will decide the substantive question.

"But now go on to Rule 26 which says:—'When any one amendment is affirmed, the question shall be put to the vote and amended accordingly.' On neither interpretation of the word 'amendment' can I attach any sort of meaning to that clause The question has already been amended, because the amended question has been before the meeting. More than that, the question has been put to the vote and disposed of, so that there is nothing more to be done; and consequently Rule 26 seems to me to have no meaning whatever as it stands. If, indeed, the rule means, as is probably the case, 'when any one amendment is affirmed, the question *shall be amended accordingly and put to the vote*,' this would no doubt be in accordance with Parliamentary practice, but it would be in direct contradiction with what has preceded in Rule 25, according to which the question has already been put to the vote and disposed of.

"The rules as they stand are consequently open to serious objection. It would, perhaps, not be difficult so to alter them as to bring them into consistency both with Parliamentary usage and with one another. But I am not sure that it is necessary to adopt the Parliamentary usage here; and on the whole it seems to me that the difficulty can be removed quite as effectually by the proposal which His Honour the President has made, and which is in conformity with popular practice."

The Hon'ble Sir Henry Harrison said:—"The Hon'ble Sir Alfred Croft has given an excellent dissertation on the academical or theoretical side of the question before the Council, and I am glad to say that my experience of the practical side of the question bears out the wisdom of adopting the amendment proposed by His Honour the President.

[*Sir Henry Harrison; The President; Sir Charles Paul.*]

"I have had considerable experience for some time of the practical way of dealing with a large number of simultaneous amendments; and I may say that the difficulty is partially insoluble, because sometimes you have amendments of such a kind that you cannot get the real view of the meeting upon them, as each party will vote for their own particular proposal. But the best solution lies in the amendment now proposed, because it is necessary when there are many amendments to select and to put them in such order that the views of the meeting may be clearly obtained; and it seems best that the power to do so should rest with the President of the assembly.

"For example, in the Municipality we had a certain rule for electing candidates to office. Each candidate whose name was proposed was put up and voted for; then the next and the next, till some one candidate got an absolute majority of votes. The result was that the candidate whose name was put up first had no chance, because the supporters of all the other candidates combined against him, and so on, each successive candidate having a better chance as he would get some support from the friends of the candidates already rejected. And therefore the candidates made careful calculations as to the order in which their applications should be sent in and appear in the lists, as upon that depended their chance of obtaining a number of votes from amongst the supporters of those whose names were put forward before. Similar manœuvring may be practised as regards amendments if they have to be put according to any hard-and-fast rule.

"Much the best remedy therefore is that which leaves it entirely to the President to decide which shall be put first, whether the first, second, or third amendment, or the original motion, in order to get at the sense of the meeting."

[His Honour the President asked Sir Charles Paul, as the oldest Member of the Council, whether in his experience Rules 25 and 26 have ever once been worked?]

THE HON'BLE SIR CHARLES PAUL said:—"I do not know about these Rules having been used in practice. The Select Committee adopted the existing rules with such modifications as presented themselves for consideration. They did not turn their attention to these Rules from the point of view which His Honour the President has put before the Council, and it appears to me that the proposal framed to amend these Rules is a perfectly correct proposal, namely, to give the President the right to put amendments to the Council in any order he thinks proper.

[*Sir Charles Paul; The President; Sir Alfred Croft; Mr. Nolan; Sir Henry Harrison.*]

"There are cases in which it is necessary to put the amendment first, and that could not be done under the existing rule, but I may add that in point of practice the rule does not seem to be generally followed; and under these circumstances I have no objection to these Rules being amended as proposed, and it seems to me most expedient to do so."

His Honour the President then moved that, the words 'It shall be in the discretion of the President to put first to the vote either the original motion or any of the amendments which may have been brought forward' be substituted for the following in Rules 25 and 26:—

'And before putting any other question shall put the question that the original motion do stand without amendment.

'If that question is decided in the affirmative, the motion shall be put to the vote without amendment. If not, and there be but one amendment proposed, the motion shall be put to the vote as proposed to be amended; or if there be more than one amendment proposed, the question shall be put that the motion be put to the vote as proposed by the amendment which the President thinks may most conveniently be first disposed of, and so if necessary, of all the others.

When any one amendment is affirmed, the question shall be put to the vote and amended accordingly'

The Motion was put and agreed to.

The Hon'ble Sir Alfred Croft moved that in Rule 13, the words 'No Member in debate shall name another Member' be omitted.

He said:—"I do not know whether it is desirable to retain these words as the rule has never been observed in practice."

The Hon'ble Mr. Nolan said:—"I submit that it will be better to alter the practice; naming a Member in a certain stage of a discussion may be objectionable"

The Hon'ble Sir Henry Harrison said:—"In a rowdy assembly there would be objections to naming a Member, and in such a case it would be better to preserve the rule. But if you have a well-ordered assembly, it is better to have no such rule. It all depends upon the character of the assembly. I do not think any actual inconvenience will result from naming members in this Council"

The amendment being put, the Council divided:—

Ayes.	*Noes.*
The Hon'ble Raja Rameshwar Sing Bahadur.	The Hon'ble H. Pratt.
The Hon'ble Dr. Rash Behary Ghose.	The Hon'ble T. T. Allen.
The Hon'ble Shahzada Mahommed Furrokh Shah.	The Hon'ble P. Nolan.
The Hon'ble C. H. Moore.	
The Hon'ble Dr. Mahendra Lal Sircar.	
The Hon'ble Sir Alfred Croft.	
The Hon'ble Sir Henry Harrison.	
The Hon'ble F. B. Peacock.	
The Hon'ble Sir Charles Paul.	

So the Motion was carried.

The HON'BLE SIR CHARLES PAUL moved that the Rules, as now settled in Council, be passed.

The Motion was put and agreed to.

CALCUTTA AND THE SUBURBAN POLICE SUPERANNUATION FUNDS BILL

THE HON'BLE SIR HENRY HARRISON moved that the Bill to consolidate the Calcutta and the Suburban Police Superannuation Funds, as settled in Council, be passed.

He said:—"The Bill was discussed and passed at the last meeting of the Council with a small amendment of a formal character proposed by myself, and I see no possible objection to its being passed now."

The Motion was put and agreed to.

CALCUTTA PORT BILL.

HIS HONOUR THE PRESIDENT said:—"The next question on the notice paper is the discussion upon the motion that, the Report of the Select Committee on the Bill to consolidate and amend the law relating to the Port of Calcutta, and to the appointment of Commissioners for the said Port, be taken into consideration.

[*The President; Sir Henry Harrison.*]

"But I might mention that in considering the dissents of the two Hon'ble Members who have affixed separate memoranda to the Report of the Select Committee, I got the very valuable assistance of the learned Advocate-General, and we had an informal meeting last week with the Members of the former Select Committee, who were by that time *functi officio*. The result was that a fresh clause was drafted to meet, as far as possible, the objections taken to the original one. It is the clause which you see in the notice paper in the name of the Hon'ble Sir Henry Harrison.

"But in the course of this week the Hon'ble Mr. Moore applied to me, requesting that the discussion of the matter might be postponed, as the Chamber of Commerce wished to consider the section in its latest form and to take legal opinion upon it. I am quite sure you will all agree with me that it is better to give ample time for consideration rather than to have a debate in this Council which can be avoided, and certainly rather than to have it said that we are hurrying the measure through the Council unnecessarily.

"I therefore took it upon myself to tell the Hon'ble Member that there will be no discussion to-day, and that the consideration of the measure will be postponed to the next meeting of the Council."

The consideration of the Report was, therefore, further postponed.

BENGAL VACCINATION BILL.

THE HON'BLE SIR HENRY HARRISON presented the Report of the Select Committee on the Bill to amend the Bengal Vaccination Act, 1880, and Bengal Act II, 1887.

He said:—"As a matter of fact, although this Bill is mainly a formal one, the Select Committee have made considerable changes in it. Our colleague, the Hon'ble Mr. Nolan, whom I am now permitted to name without any breach of rules, pointed out the effect of the various provisions of the Act, and has recorded a note on the subject; and the result of our consideration has been that we found first that the formal object of the Bill would be better attained not by substituting 'Calcutta' for the 'Town of Calcutta,' but by simply altering the definition of the 'Town of Calcutta,' and omitting the definition of 'the Suburbs:' and then we found no necessity for touching the amended Act at all. Because though the amending Act does refer to

the Suburbs, it refers to it in a sense which requires no actual definition; it merely applies to sailors coming to the Suburbs or the Town of Howrah.

"The effect of removing the definition of the 'Suburbs of Calcutta' would not raise any difficulty in the two places in which the words are found. The words would merely remain as meaning (precincts), thus giving that protection to the precincts of Calcutta which ought to be given."

The Council adjourned to Saturday, the 1st February, 1890.

CALCUTTA;
The 24th January, 1890.

C. H. REILY,
Assistant Secretary to the Govt. of Bengal, Legislative Dept.

NOTE.—The meeting fixed for the 11th January, 1890, was subsequently postponed to the 18th idem

Reg. No. 781G—300—23-1-90.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., Cap. 67.

THE Council met at the Council Chamber on Saturday, the 1st February, 1890.

Present:

The HON'BLE SIR STEUART COLVIN BAYLEY, K.C.S.I., C.I.E., Lieutenant-Governor of Bengal, *presiding.*

The HON'BLE SIR CHARLES PAUL, K.C.I.E., *Advocate-General.*

The HON'BLE F. B. PEACOCK.

The HON'BLE P. NOLAN.

The HON'BLE T. T. ALLEN.

The HON'BLE SIR HENRY HARRISON, KT.

The HON'BLE SIR ALFRED CROFT, K.C.I.E.

The HON'BLE DR. MAHENDRA LAL SIRCAR, C.I.E.

The HON'BLE C. H. MOORE.

The HON'BLE H. PRATT.

The HON'BLE SHAHZADA MAHOMMED FURROKH SHAH.

The HON'BLE DR. RASH BEHARY GHOSE.

The HON'BLE RAJA RAMESHWAR SING BAHADUR.

BENGAL VACCINATION BILL.

THE Hon'ble SIR HENRY HARRISON moved that the Report of the Select Committee on the Bill to amend the Bengal Vaccination Act, 1880, and Act II, 1887, be taken into consideration in order to the settlement of the clauses of the Bill.

The Motion was put and agreed to.

The Hon'ble SIR HENRY HARRISON also moved that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee.

He said:—"I have explained the object of the Bill at a previous meeting, and it is therefore not necessary for me to say anything further on this occasion."

The Motion was put and agreed to.

The Hon'ble SIR HENRY HARRISON also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

[*The President.*]

CALCUTTA PORT BILL.

His Honour the PRESIDENT said:—"Before adjourning the Council, I think I owe a few words to it in explanation of the omission from the list of business of the Ports Bill which had been originally entered in the list of business for discussion to-day.

"You will recollect that a fortnight ago we adjourned without considering it, in order that the Chamber of Commerce might have an opportunity of submitting a memorial, which we understood was in the course of preparation for our consideration.

"On Wednesday last, my friend, the Hon'ble Mr Moore, told me he was afraid he would have to ask for another postponement in consequence of the absence of the Chamber's legal adviser. I asked him to see if the postponement could not be avoided, but I heard from him yesterday that he had been unable to get the memorial considered in time for us to take it up to-day, and he again asked for an adjournment. Upon that I took it on myself to exclude the motion from the list of business for to-day.

"Since then (yesterday) I received an application, which I think is in your hands, from the Secretary of the British Indian Association, which requests us that we will postpone for a fortnight the consideration of the Select Committee's report in view of the Committee laying before the Council some further representation regarding section 85.

"I may add that the Secretary says 'that the question of title in riverbanks having been treated by the Select Committee as one of general application, my Committee venture to hope that His Honour the Lieutenant-Governor will be pleased to recognize its importance by granting their prayer.'

"On this occasion I am very glad that we are able to meet their wishes without adding to the inconvenience of the Council, but I think I must protest against a body of the importance of the British Indian Association addressing us two days before the Bill is down for final consideration, asking us to postpone that consideration with reference to a point which has been discussed in all the newspapers since the issue of the report of the Select Committee which has been before them for five whole weeks, and regarding a section which has been the law of the land, with a slight alteration, for the last twenty years. I think it would be more respectful to the Council, and more conducive to public business, if they would take matters of that kind into their consideration a little earlier before the date of actual discussion in Council.

"On this occasion, as I said, I am very glad to be able to meet their wishes, but I do hope that, on Saturday fortnight, to which I propose to adjourn the Council, this Port Bill may be brought up for discussion and settlement."

The Council adjourned to Saturday, the 15th February, 1890.

CALCUTTA;
The 3rd February, 1890.

C. H. REILY,
Assistant Secretary to the Govt. of Bengal, Legislative Department.

Reg. No. 810G—300—5-2-90.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., Cap. 67.

THE Council met at the Council Chamber on Saturday, the 15th February, 1890.

Present:

The HON'BLE SIR STEUART COLVIN BAYLEY, K.C.S.I., C.I.E., Lieutenant-Governor of Bengal, *presiding.*

The HON'BLE SIR CHARLES PAUL, K.C.I.E., *Advocate-General.*

The HON'BLE F. B. PEACOCK.

The HON'BLE P. NOLAN.

The HON'BLE T. T. ALLEN.

The HON'BLE SIR HENRY HARRISON, KT.

The HON'BLE SIR ALFRED CROFT, K.C.I.E.

The HON'BLE C. H. MOORE.

The HON'BLE H. PRATT.

The HON'BLE SHAHZADA MAHOMMED FURROKH SHAH.

The HON'BLE DR. RASH BEHARY GHOSE.

The HON'BLE RAJA RAMESHWAR SING BAHADUR.

CALCUTTA PORT BILL.

The HON'BLE SIR HENRY HARRISON moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to the Port of Calcutta, and to the appointment of Commissioners for the said Port, be taken into consideration in order to the settlement of the clauses of the Bill.

The Motion was put and agreed to.

The Hon'ble SIR HENRY HARRISON also moved that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee.

He said:—"I think the Select Committee may fairly claim to be satisfied with the work which they have put before the Council. It is perfectly clear that in regard to one section, 85, and other matters cognate thereto, we have been confronted with very great difficulties which, I am free to admit that though we have tried our best to surmount, still remain for discussion. But putting that section aside, and the questions arising out of it, and looking

to the fact that no other amendments are proposed except in regard to that matter, I think we may claim to have settled the Bill in a manner satisfactory to all parties.

"There were several other controversial questions: for instance, the question of the number of Commissioners, in regard to which the Bill can only be said not to have given general satisfaction, because the National Chamber of Commerce have expressed their dissatisfaction; but upon that point the Lieutenant-Governor gave a hearing to the representatives of that Chamber, and at the end, I think, they also were satisfied. Anyhow, it seems that no member of the Council has moved an amendment on that section. The number of members asked for has been given to the Bengal Chamber of Commerce. And, as regards the number of native Commissioners, we think it better to trust to the probability that two of the members who will be returned by the elective bodies themselves will be natives, than to say that two of the elected Commissioners must be natives. Your Honour yourself has pointed out that to the Bengal Government are allotted only five members, whereas it may be said that six interests, including the Chairman of the Municipality, require representation. As regards the Municipality, I think it is clear from our proceedings that we do not suggest any guarantee that the Chairman shall be nominated; and I may say that this is one of the six interests for which there are five vacancies—but what the Select Committee have considered, and what the Government, I believe, have accepted, is that, if the Chairman is to be a member, then he can be nominated. Anyhow, it is intended that the Municipal Commissioners ought to have the right of free election without having to consider that, if they do not elect their Chairman, he cannot be a member of the Port Commission.

"Then, as regards the questions as to the control of the Government over the budget and over rules to be passed by the Port Commissioners and other matters, we have settled them in a way which, from the absence of any amendment, seems to have given satisfaction to all parties.

"Lastly, as to the important question of the equitable assessment of the Port Trust property, we have introduced a new assessment section which appears to give satisfaction on the one hand to the Port Trust, and on the other hand to the Municipality and the Local Government. Your Honour appears to be satisfied with the duty imposed on the Government of mediating in the matter should it appear necessary.

"As regards the one debatable section, its details will be discussed when the amendment comes before the Council. All I wish to say now generally is, that I think the Hon'ble Mr. Moore will admit that, from the first the Council has endeavoured to meet the question in a conciliatory manner; and that the impression that there was an endeavour to harden the law or to make the law more drastic, is without foundation. From the very first, we introduced some modification in the former section by giving the Local Government the power of awarding compensation when they are satisfied it should be given; but it appears that the persons who are interested do not consider that an executive guarantee of that kind is satisfactory. They consider that they are entitled to some legal guarantee, and therefore, in that form, the section is no longer before the Council, but has been modified. Still I may fairly claim to say that from the first the Select Committee, wherever they have touched questions of this kind at all, have always touched them in the way of softening rather than of hardening previous laws.

"It may be objected that the section was so worded as to have retrospective effect; but the old section required to be re-introduced with retrospective effect, because it has been in force for the last twenty years: and when we found there must be a discussion on it, we placed it in the more simple form of giving it retrospective effect, instead of giving it effect from 1870. If the solution of giving it effect from 1870 had been considered satisfactory, no doubt the Select Committee would readily have compromised upon that basis The only reason why it was put in the simpler form was, that the principle might come before the Council in the widest possible form; as they understood from the Hon'ble Mr. Moore that it would be contested. Otherwise, no one would have objected to alter in such a way as not to take away any rights which the previous law had not taken away."

The Motion was put and agreed to.

The Hon'ble MR. MOORE moved that the following clause be added to section 2 of the Bill:—

'Nothing herein contained shall deprive any person of any right of property or other private right, except as hereinafter expressly provided.'

He said:—"I have not come here with any long-set speech on this subject. All I wish to do is, to capture your votes; and the less I trouble you the more chance I shall have of succeeding."

[Sir Henry Harrison; Mr. Moore.]

[The Hon'ble SIR HENRY HARRISON interrupting, asked whether it was more convenient that the discussion should take place over the present amendment or over the next: he was willing to accept this amendment?]

The Motion was put and agreed to.

The Hon'ble Mr. MOORE also moved that, for section 85 of the Bill, the following be substituted:—

'85. In case any wharf, quay, stage, jetty, pier, erection or mooring may have been or hereafter shall be, made, erected, or fixed within or without high-water-mark without the limits of the port, and thereafter the limits for the time being of the port shall be extended so as to include the place on which such wharf, quay, stage, jetty, pier, erection or mooring shall have been made, erected, or fixed, it shall be lawful for the Commissioners, when the safety of navigation or the improvement, maintenance, or good government of the port so requires, to remove, fill up, or destroy such wharf, quay, stage, jetty, pier, erection or mooring:

Provided that when any such work has, under this section, been so dealt with, the Commissioners shall, when such work was made on behalf of the public for the convenience of public traffic, make or provide for the use of the public such sufficient wharves, quays, stages, jetties, piers, erections or moorings as the Local Government may direct, and shall, when such work was made by any private person for the convenience of private traffic—

(*a*) on land belonging to the Government, with the previous consent of the Local Government in writing, or of which the making, erecting, or fixing has been subsequently sanctioned by the Local Government in writing; or

(*b*) on land belonging to the private owner, whether acquired by grant from the Government, or by prescriptive right, or otherwise,

make compensation therefor to the owners thereof to such an amount as may be determined by agreement by and between the Commissioners and such owners, or by the Civil Court in which a suit may be brought to establish and enforce such right of compensation.'

He said:—"I presume, I may hope, you have all read the memorial of the Chamber of Commerce, because that memorial, coupled with the dissent I previously recorded, I put in, so to speak, as my case. I wish at the outset to state that every legal allusion, historical and otherwise, in that memorial was submitted, approved, and settled by Mr. Woodroffe, the Counsel consulted by the Chamber. I specially mention this, because I have heard it has been concluded that Mr. Woodroffe did not approve the arguments set out in the first two pages of the memorial, because in the opinions quoted in the annexures he did not specially allude to them. That is easy of explanation. The opinions merely

replied to specific points put to him, which did not happen to include those arguments, the drift of which, I think, the Council understands.

"Briefly it is this: I maintain that this Bill as drafted discards the principle existing in the governing Ports Bill of the Supreme Government that, certain private property cannot be included within the limits of a port; and that every sense of reason and justice demands that this Bill should be brought into conformity with that principle, that is to say, with the Bill of the Supreme Government. If it is not so, it gives rise to great anomalies, as it makes the tenure of property on foreshores ruled by the Port Act totally different to that ruled by the substantive law of the land; and as no limit is ascribed to the distance to which the port may be extended, no holder of such property is secure in the understanding of his liabilities and obligations, as at any time a stroke of the pen may entirely change them. The Port Law may with the port go up to Chinsurah or Hooghly, or down to Diamond Harbour, or anywhere, and surely the perpetuation of such a state of affairs is neither sound nor just legislation.

"The section which I move indicates the principle I fight for, as well the further essential and equally sound doctrine that, when private property and rights have to be acquired for the public good,—the power to acquire which, I do not contest, must under proper conditions exist—complete compensation must be given for what is taken away, and confiscation without compensation must, under no kind of circumstances, be legalised.

"That was the principle enunciated by the Supreme Government when it re-enacted their Ports Bill in 1875, and it was deliberately enunciated because the true interpretation of the Act of 1855 on this point had been misunderstood in the administration of the Bengal Act V of 1870, which is shown in the remark of Mr. Hobhouse at the time, that the literal construction of the section (*i.e.*, the section in the Act of 1855 to which all my remarks refer) could not have been intended (that is to say, the construction that a private wharf could be included within the limits of the port) taken in connection with the fact that, on literal construction the Port Commissioners had, under Act VII of 1870, acted in regard to a private wharf, the owners of which drew the attention of Mr. Hobhouse to the circumstance, with the result that he spoke as quoted and introduced the change named.

"Now that we are re-enacting our Act passed five years before this change in the Government of India Bill, it behoves us to follow the same lines,

and correct our Bill as the Supreme Government corrected theirs which governs ours. Towards this result, I ask for your votes for my motion; and have only further to point out that this Bill is to rule the Port Commissioners, who are the guardians of the trade of the port, which is represented by the traders whom I represent in this Council. There is no antagonism of thought on this point between traders and their guardians; and as the representative of the traders, I say we are strongly in favour of the principle that, private property and rights within or without the port must be respected, and when acquired for public good must be paid for; that we are the people who have to pay, and being willing and desirous of paying what is equitable and proper, we press that legislation which is for us should be on these lines.

"I cannot find one dissentient voice to what I urge outside the walls of this Council; and to the best of my belief, therefore, if this motion is lost, the only opponents to it connected with the port of Calcutta will be the majority which reject it, who will by such rejection, to the best of my belief, be denying that the administration of the port should in any way recognise that private property and rights exist."

The Hon'ble SIR HENRY HARRISON said:—"It will probably be most convenient if, simultaneously with the amendment moved by the Hon'ble Mr. Moore, I move the amendment which stands in my name, as it covers the same ground. On this point, I think, I labour under a certain disadvantage, because the Hon'ble Mr. Moore has not made any allusion to this amendment; he has not stated in what respects it falls short of what he thinks right and proper. This I find a great difficulty, because the clause which I propose has been carefully worded to meet the very principles for which the hon'ble member contends."

The HON'BLE MR. MOORE continued:—"I was not aware I could allude to another amendment in discussing this. My main objections are in the third opinion of Mr. Woodroffe, who points out the thick veil of ambiguity in which the context of the word 'lawfully' is concealed, and what it here means and implies. That in the sanction to be given by the Local Government to destruction of a jetty, it is not laid down that the party interested is to receive previous notice of the intention of the Port Commissioners; and such sanction might be applied for and given as a matter of routine by an Under-Secretary without the person interested knowing anything of it, until the notification

dooming his property was pasted upon it. That my section more clearly defines the exact circumstances under which compensation is due and must be paid, and it sets out the principles which justifies private property being touched, namely, when necessary for the safety of navigation or good government of the port; whereas under the Hon'ble Sir Henry Harrison's section, power of seizure is given without naming any reason for it at all."

The Hon'ble SIR HENRY HARRISON then moved by way of amendment that, for section 85 of the Bill, the following be substituted:—

'In case any wharf, quay, stage, jetty, pier, erection or mooring may have been, or shall hereafter be, made, erected, or fixed below high-water-mark without the limits for the time being of the port, and thereafter the limits of the port shall be extended so as to include the place on which such wharf, quay, stage, jetty, pier, erection or mooring shall have been made, erected, or fixed, it shall be lawful for the Commissioners, with the sanction of the Local Government in writing, to remove, fill up, or destroy such wharf, quay, stage, jetty, pier, erection or mooring:

Provided that any person who may have lawfully made, erected, or fixed such wharf, quay, stage, jetty, pier, erection or mooring, or who may have acquired a prescriptive right thereto by possession of sixty years or upwards, his representatives or assigns, shall be entitled to institute a civil suit for the award of compensation to him for the injury caused by the removal, filling up, or destruction hereinbefore mentioned.'

He said:—"I think I interpret the general feeling of the Council when I say that if the objections to this clause are what has been stated, they are not of a very formidable character, and there is no great gulf between the Hon'ble Mr. Moore and myself. The only reason why no such clause as that to which the hon'ble member refers has been inserted is, because it is not usual to do so; because it is obviously right and proper that the Lieutenant-Governor should consult the persons to be affected, that being the usual way for the management of business. If that is the only objection raised, there will be nothing to prevent the insertion of words which will substantially secure that the interest to be affected has warning of the intention of the Port Commissioners before any order is passed. [The PRESIDENT:—"That could be done by rules."] So far that objection can be easily removed.

"The other objection which has been taken is, that the words used are obscure. The question is, whether the obscurity is to be found in the framing of the amendment, or in the subject-matter of it. If the matter itself is obscure, then legislation regarding it must, to a certain extent, correspond to that

obscurity. These words were very carefully selected, because it was supposed that they honestly conceded the whole principle which the Hon'ble Mr. Moore has enunciated, and which I may say generally is accepted by this Council as much as by those outside, namely, that if the Port Commissioners have to acquire any private rights they must pay for those rights. The idea of confiscation is entirely repugnant to every member of the Council, and none of us repudiate the idea less strongly than the Hon'ble Mr. Moore himself.

"The whole difficulty lies in the question, whether or not any rights do exist? It is perfectly true that the India Act of 1875 was framed with scrupulous care to prevent the possibility of its being interpreted against private rights. At the same time, I am sure, the hon'ble member will remember that Mr. Hobhouse, on being pressed to go further, not only to protect private rights but to bestow rights, said that the section would not go so far. If the India Council were asked to arbitrate in this matter, it was very probable their decision would not be in the direction wished; but they were careful to maintain any rights which did exist, and that is precisely what my amendment is intended to do.

"Now in a matter of this kind there ought not to be any strong party feeling, because it is, if I may say so, an interest legislating for itself. In many cases where the Government or the Legislature are deciding matters, unfortunately they are obliged to recognise the existence of rival interests. The Government, whilst considering the interests of the whole community and representing it, occupies the position of an arbitrator, and is obliged to take cognizance of the fact that there are rival interests, and that it must endeavour to hold the balance evenly between them. But, fortunately, in this instance there are no rival interests. The Government is merely legislating on behalf of the Port Trust, and this Trust may be fairly described as a body in which the trade and commerce of Calcutta is able to organise itself for the purpose of its own benefit, for the purpose of facilitating and improving the trade of the port.

"On the other hand, the objections are raised on behalf of individual members of the community engaged in the trade of the port. So that, really, we here enjoy the special advantage that we are not in any way deciding between rival interests, or in any way defending one interest against another; but simply we are considering within the circle of one and the same interest

how much ought to be given to the interests of the trade as a whole, and how much is fairly due to the interests of its individual members. And on this matter I am bound to say that the remark made by the Hon'ble Mr. Moore, that it is the wish of those interested in the trade that the greatest possible liberality should be shown to individual interests, ought to commend itself very much to our consideration.

"Still we are not legislating for the hour, and we must not, therefore, attach too much weight to what may be merely the sentiment of the hour. We must try and frame the law in accordance with sound and tenable principles, and must bear in mind that as the Port Trust are a body which only levies what it needs for its expenditure, and that whatever compensation is to be paid must come from the trade of the port as a whole, and whatever is saved is similarly saved to the trade of the port. Therefore, I hope it will be fully realised by every member of the Council that, this case is not a very invidious one, and can in no case subject us to any invidious criticism of sacrificing the interests of one class to those of another. What we are considering is, how far the trade and commerce of the Port of Calcutta can be legitimately charged for the compensation to be paid to individual members, whose interests come into conflict with those of their own body. Now putting it in that way, I must say it seems to me that the answer ought to be very simple; that every private right ought to be scrupulously respected.

"But is not it equally clear that to go beyond this is wrong and bad legislation? Supposing there is no right; supposing somebody is wrongly holding adversely to the interests of the community at large; is it not equally clear that the interests of persons with no rights ought not to be allowed to block the interests of the community? Is it not perfectly clear that the interests of the community are paramount? If you admit these two principles—and I can hardly conceive any one contending that they are not proper principles—then we are justified in passing the present amendment. We carefully preserve existing rights. Power must be given to the Port Commissioners to remove any jetty or wharf, or other structure which interferes with the working of the port; but then comes the question how far compensation ought to be given. The amendment says: 'Provided that any person who may have lawfully made, erected, or fixed such wharf, &c., or who may have acquired a prescriptive right thereto by possession of sixty years or upwards, his representatives or assigns, shall be entitled to institute a civil suit for the

award of compensation.' We are told that this is ambiguous, but the ambiguity is in the character of the right, not in the wording of the section; and this is an ambiguity from which we cannot escape. We say that if a person has lawfully put up a particular jetty, then he shall be entitled to sue for compensation. Surely, this is as much as we can be fairly expected to say. If it has been lawfully put up, a suit for compensation will lie; and if, though not lawfully put up, a prescriptive right can be shown, in that case also a suit can lie for compensation. Therefore, do we not here do everything that can be asked, unless we are asked to give more than exists? We say that, private rights are to have their full sixteen annas in the rupee: we only object t giving them twenty-four annas. d

"The objection which fairly lies against the Hon'ble Mr. Moore's amed ment is, that it makes the Council the judge beforehand of a matter which sh will be left to the judgment of a Court of Law, namely, that compen y to shall be given; that is to say, that though the Court may find that go is no case for compensation, yet we are asked to decide beforehand as compensation shall be given.

"It is well known that Courts of Law are on the whole sympathetic with the rights of individuals, and yet we are asked to legislate that in all cases compensation is to be given; that the Court is not to decide upon the question whether any compensation ought to be given, but only what the amount of compensation should be. I appeal to you to say whether, in reality, it is not *we* who have principle on our side; whether it is not *we* who are raising our protest against confiscation, *i.e.*, the confiscation of the rights of the public? If the principle be what the Hon'ble Mr. Moore recommends, if it is only a question of this principle, I think he would have every one of us on his side; but his own amendment does not carry out the principle. It seeks to add something to private rights. The amendment framed here has been scrupulously worded with the precise object of giving effect to what the Hon'ble Mr. Moore asks, namely, that there should be no confiscation of rights which exist; but we say also that there should be no addition of rights which do not exist.

"I may even say that my amendment goes further. Although by a law of twenty years' standing greater powers are given, namely, that the law says that no compensation shall be given, we limit it to what we think right and proper, and just; we amend the law and say, provided the structure is

lawfully erected, or has acquired a prescriptive right, compensation is to be given.

"If no further fault can be found with the amendment than what has already been alleged, I ask the Council to say in what respect it falls short of what is right and proper? Does it not concede everything which the earliest opinion, and even the second opinion, of Mr. Woodroffe asked for? It concedes the case in which jetties have been lawfully put up, and the removal of which causes injury, and in such cases, it specially prescribes that compensation may be claimed; and it leaves to the Courts to determine whether, according to the law a[illegible]e land, a case for compensation has been established or not.

wh[illegible] Therefore, I hope, on all these grounds, the Council will see its way pai[illegible]t my amendment. I say it does not differ much from the Hon'ble is si[illegible]re's amendment, but where it does differ, it is precisely upon those points fully [illegible]h the Council ought to insist, namely, that it refuses to give further invid[illegible]—rights which do not exist; it refuses to say that a person who has not fir[illegible] a right to compensation shall have right to get it. With these remarks, I beg to recommend my amendment to the Council."

The Hon'ble MR. PEACOCK said:—"I desire to say a few words in support of the Hon'ble Mr. Moore's amendment; and I support the amendment chiefly on the ground that, by the legislation of the Government of India, an example has been set which, I think, might well be accepted by this Council. In the Acts of 1875 and 1889 largely, and certainly in the Act of 1855 to a smaller extent, not only was there no infringement of private rights—perhaps I ought not to say infringement of rights, as that would be going too far—but certainly any interference with private property has been carefully avoided.

"In section 57 of Act V (B.C.) of 1870 for the first time this principle of interference was introduced, in so far that it gave to the Port Commissioners certain rights which, it seems to me, might be carried too far in certain cases. But in section 85 as proposed in the Bill as amended by the Select Committee the same thing is re-enacted, and to a greater extent, in so far that retrospective effect is given to this power. In this section, however, there is a proviso added, that it shall be lawful for the Local Government to direct the payment of such compensation as under the circumstances may seem fair and equitable.

"But in the amended section proposed by the Hon'ble Sir Henry Harrison this proviso is entirely withdrawn, and he has explained the reasons why it was withdrawn. I am bound to say that, speaking for myself, that does not appear to be altogether satisfactory. The Port Commissioners have now the power of doing anything in the way of removing jetties or wharves, for which they can obtain the sanction of the Lieutenant-Governor. Now, I venture to say that the Port Commissioners will never have any difficulty in putting forward so plausible an *ex parte* case, that it will be almost impossible for the Lieutenant-Governor to refuse sanction. At all events, I venture to predict that sanction will be withheld in very few cases.

"Of course I know the argument which has been and which will be used against me, that these encroachers on the foreshore are persons without any semblance of right, and are consequently not entitled to any consideration whatever. I am bound to admit that in this argument there is very great force, and if it were so, that the limits of the port were never likely to be largely extended, I should be with the Hon'ble Sir Henry Harrison; but when we have to consider the probability, or certainly the possibility, of the port limits being extended at any moment to almost any extent in either direction, I think the case is different.

"Take the case of a man who at Titaghur erects a jetty for the landing of his goods. This may have been done even before the passing of Act V (B.C.) of 1870; he knows that he is well outside the limits of the port; he thinks, as far as he is capable of thinking on the subject, as in all probability his ideas of the rights of the Government to the foreshore are not very clear, that what he has done is absolutely legitimate; it interferes with no traffic of the river, neither can it be said to be an obstruction. But because by a stroke of the pen, as the Hon'ble Mr. Moore said, the limits of the port are extended so as to include this erection of his, it may be swept away at a moment's notice without any compensation.

"I cannot help thinking in the case, more particularly where the erection is a long way out of the port limits, that a provision such as this is likely to operate harshly. I know that I may also be met by the statement that all this opposition to section 85 is unnecessary and uncalled for; because it may be assumed that, because the Port Commissioners have never done anything high-handed or inequitable, they never will do so. I am sorry I cannot accept this proposition. It may be taken for granted that the Port Commissioners

will do nothing which they believe to be unfair and inequitable in any way; but at the same time, when a project is under consideration, it is astonishing how easily the facts are made to fit with what is desired; how private rights are lost sight of, more particularly where the infringement of those private rights costs nothing. For these reasons, I support the amendment of the Hon'ble Mr. Moore."

The Hon'ble MR. NOLAN said:—"The motion which stands in my name on the list of business, to the effect that the existing law, as embodied in section 57, Act V (B.C.) of 1870, should be retained without alteration, was framed when the only alternative proposal before the Council was one which many considered defective, and which has since been discreetly withdrawn. The amendment now put forward by the hon'ble member in charge of the Bill seems to have been drawn with the intention of meeting, so far as is thought practicable, the wishes of the hon'ble members who represent the commercial interest, and that appears to me to be the proper course to adopt. I, therefore, support the Hon'ble Sir Henry Harrison. The law in its present form was passed at the instance of the commercial members who sat in Council in 1870, and may very properly be altered on the motion of their successors, to whose opinion we all attach the greatest weight. Indeed I would be inclined to go further, and to let the Hon'ble Mr. Moore and those who act with him regulate the matter precisely as they propose, if the effect of our decision could be confined to the area with which they desire to deal. The section itself is of no great importance; it has been in existence for twenty years without ever being put in force, and, as the procedure it prescribes is less convenient than that of the Land Acquisition Act, it might exist unused for another century. It is the Mrs. Harris of our legislation, much talked of, but never seen. I wish we could let the Hon'ble Mr. Moore deal with it just as he wills, but unfortunately his motion is so worded as to touch other interests not contemplated by him, and to be most inconvenient as a precedent.

"In the first place, his amendment provides that, private wharves and so forth shall be interfered with only 'when the safety of navigation, or the improvement, maintenance or good government of the port, so requires.' To this there is no objection whatever; but the Hon'ble Mr. Moore fails to indicate any authority to decide whether such requirements exist or not, and thus silently remands the issue to the ordinary tribunals. This is a new principle in Indian

legislation; all previous laws for the acquisition of land for public purposes having made the Local Government sole judge as to whether the land is really required or not, and I fail to see how any law can be worked without some such provision. The alternative is to leave the question to the Courts of Law, calling on the Judges to pronounce what is or is not requisite for navigation and good government, and thus creating a new source of litigation. This, however, is a small matter, to which if it stood alone I would not refer.

"But in the second place, while the Hon'ble Sir Henry Harrison provides for compensation in every case where a wharf has been lawfully erected, the Hon'ble Mr. Moore goes further, and would liberally give compensation whether the erection was lawful or not. Now this might be generous were we dealing with our own money; but it seems scarcely fair when the general tax-payer has to pay for all. And regarded in the light of a precedent, I cannot but consider the studied omission of the word *lawfully* as of the worst example. In ports, such as Calcutta, the public right of way on our great rivers is guarded by stringent laws and an elaborate organisation; but in the interior, the District Magistrates are left to defend our communications as best they can against the attacks of a hundred riparian proprietors, each very naturally caring less for the general commerce of the country than for his own private pier, or fishing stockade, or landing charges. The struggle is always going on with varying success. I speak of it from experience, having had to try many prosecutions of the kind myself as a Magistrate.

"Now what will be the effect on such contentions of the omission of this word *lawfully*? Obviously to indicate to those concerned that all constructions by riparian owners are legal in the opinion of this Council. Such a maxim, published without qualification, would have a very mischievous tendency by encouraging encroachments of every kind on the most important highways of our Bengal commerce; and I must maintain that the maxim itself is altogether incorrect, as a person may be the owner of land between high and low-water-mark on a tidal river, and yet have no right to make thereon any permanent erection to the injury of navigation, or without the sanction of some officer appointed in that behalf. Take, for instance, the case of a proprietor within the present bounds of the port, who has a title to the foreshore, and examine what right we have left him to make future erections, and what compensation we provide for him in case such erections are destroyed. This matter is settled by the section of the present Act preceding that now under discussion,

a provision which has never been opposed, and which is re-enacted without objection in the Bill before us. It runs as follows:—

'It shall not be lawful for any person or persons, save the Commissioners, to make, erect, or fix below high-water-mark within the port any wharf, quay, stage, jetty, pier, erection or mooring without the consent in writing of the Lieutenant-Governor first had and obtained. Any matter or thing which may be so erected or fixed may be removed by the Commissioners, and the persons who shall have so made, erected or fixed any such matter or thing shall be liable on conviction to a fine which may extend to Rs. 1,000, and to a further fine which may extend to Rs 100 for every day during which such matter or thing shall have been permitted to remain so made, erected or fixed after notice to remove the same shall have been given.'

"In Calcutta, it will be seen, instead of compensation, the proprietor who builds a wharf without authority has to pay a fine of a thousand rupees to begin with, and has the prospect of subsequent fines as refreshers. Now the original proprietary rights of zemindars within the port were precisely the same as those of the zemindars whose lands lie on the other side of that fleeting boundary, from which I draw the inference that no one approving section 56 of Act V (B.C.) of 1870, and the corresponding clause in our Bill, can maintain that all proprietors as such have an indefeasible right to build wharves of any description on the foreshore they possess by the river Hughly. It is only on the supposition that they have no such right that the law, as the Hon'ble Mr. Moore agrees to re-enact it, can be defended.

"In explanation of this limitation on the powers of zemindars, even when the land has been settled with them, I may repeat the statement contained in a written opinion of the Hon'ble Sir Charles Paul's given in 1873, and subsequently confirmed by Mr. Woodroffe, that the foreshore originally belonged to the Crown. The Crown can grant rights over it, and has done so by Regulation XI of 1825, which gives to all riparian proprietors a contingent and reversionary interest in river-beds, inasmuch as the land will become an accretion to their estates when the waters change their course. Moreover, the banks and even the beds of rivers have been settled with zemindars in many cases, thereby conveying to them a right to the property for proper purposes. But the interest thus conveyed is subject to the dominant right of the public to use the river up to its utmost limit, and the adjoining tow-path, if such there be, for navigation, and inferentially to the right of the legislature to regulate that use, prohibiting whatever may interfere with its due exercise. How this was provided for at the time of settlement, I may indicate by referring to the proceedings of Mr. Crow, Deputy Collector, who settled

fifty-five villages near Calcutta in 1847. I will read an extract from his final report:—

'These lands, therefore, are in every sense of the word in their *bonâ fide* possession down to the low-water-mark in the dry season, and these landholders must accordingly be made to pay the Government revenue assessable on these lands.

'The third point regarding these banks is the right to track boats along the riverside. Of this privilege, I think the boatmen should never be deprived, notwithstanding any settlement that might be made for the lands over which they are obliged to pass with ropes, or to which they have to fasten their vessels, not to mention the loss of life and property which might attend. Any interference on the part of the landholders with the boatmen at particular times—the obstructions to the navigation of the river (situated as the Hooghly is on the side of the capital of our Eastern Empire) that would follow from any prohibition which our inconsiderate landholders might think fit to put on the privilege of tracking and fastening boats—would be so serious an injury to the interests of the public that the very thought of allowing these people to interfere with the said privileges could not for a moment be entertained. Yet want of due attention to these particulars has been the cause of serious and dangerous obstruction to the navigation along the bank in this and other localities near the city. Ghâts with high sides and pucca bastions of various kinds have been built up in many places right across the tracking paths, and several kinds of other obstructions caused without the least regard to the comfort and safety of those who are obliged to navigate along the banks.

'With due regard to these circumstances, which I consider of the last importance, I have, in settling these alluvial lands with the owners of the kurari properties, distinctly explained to them that the settlement now made with them will not in any manner entitle them to deprive the boatmen, who are obliged to make use of the tracts settled with them of any of the least privileges which they have hitherto enjoyed; nor, indeed, will they be permitted hereafter to raise new obstructions along these tracks without the sanction of the authorities entrusted with the conservative care of these public thoroughfares.'

"This is the settlement to which the riparian proprietors referred when on former occasions they impugned the action of the Port Commissioners, and may be taken as indicating the title by which the land affected by this section is held.

"I willingly acknowledge that most of the works constructed on the river-bank are useful or ornamental structures, which do not interfere with navigation, and have therefore been lawfully made. For these, compensation would be payable under the Hon'ble Sir Henry Harrison's amendment. But some are said to be obstructions to which the District Magistrates might turn their attention with advantage. These are unlawful, and if they are removed, why should we give compensation for the nuisance? If the commercial members, and those with

whom they act, think otherwise, they will doubtless be able to give effect to their views, commanding, as they do, the ascendant influence on the Port Commissioners. In the end, probably, compensation will be paid, however we word the section. I doubt if anyone will gain or lose a rupee by our action to-day. But I object to moulding our laws on the assumption of a principle which is not correct, and which, if generally applied, would be most injurious to commerce—the assumption, namely, that all constructions on the foreshore belonging to private owners are lawful.

"Before sitting down I would say a word in defence of the existing law, which we will naturally re-enact should neither of the amendments before us be adopted. It has been represented as a measure for confiscating property without compensation, but nothing could be more remote than this from its character. Its real object is to enable those who constructed suitable wharves and so forth after its enactment to secure themselves by obtaining the sanction of Government, with full assurance of compensation in the event of an extension of the port; also to deter proprietors from building obstructions which could not be sanctioned. The restriction which it implies as to riparian rights near the port is much less than that imposed within the port by our present Bill. Applications under the section are constantly made and are dealt with in a very liberal spirit. These applications and the petitions made to Government in 1874 show that the law is much better known to those concerned, than the dissenting members of the Select Committee believed. If any one has through ignorance failed to apply hitherto, he can do so now that attention is drawn to the subject. As to the complaints that the section has been worked harshly, they rest on a misapprehension, for, otherwise than as a procedure for voluntary registration, it has never been worked at all. The disputes have been under the Land Acquisition Act, and with regard to another section of this Act, never as to anything done under the authority of section 57. While willing to accept any modification which does not give a sanction to nuisances, I cannot help thinking that this part of the law might very well have been let alone. It has never been worked to the injury of any man, and has been useful, in its way, by giving an assured title to the owners of many useful works."

The Hon'ble Dr. Rash Behary Ghose said:—"I regret that I am unable to accept the Hon'ble Mr. Moore's amendment. Apart from the criticisms which have been made by the previous speakers, it seems to me that the amendment,

as it stands, is open to some very serious objections. It says, amongst other things, that it shall be lawful for the Commissioners, when the safety of navigation or the improvement, maintenance or good government of the port so requires, to remove, fill up, or destroy such wharf, quay, &c., and it then goes on to say that, if the wharf, &c., is destroyed, the owner shall be entitled to compensation.

"But I take it to be undoubted law, quite apart from any statutory provision on the subject, that when any such structure, whether erected by the Government or by any private individual, interferes with the safety of navigation, it becomes a public nuisance, and it is open to any subject of the Crown to abate the nuisance: and I do not see any reason why the Port Commissioners should be the only persons—in this country—who are to be incompetent to exercise a privilege possessed by all other subjects of Her Majesty. It is elementary to say that you do not give compensation for removing a public nuisance, and that it is in the power of any person to abate it. A public nuisance is a public offence, and it would be absurd to give compensation to a public offender.

"Then, again, I cannot congratulate the gentleman who drafted this amendment on his skill in drafting. We have heard something said about the English of the Bengal Council. But the English of our opponents is not altogether unexceptionable. Now this amendment, clause (*b*), I find speaks of 'land belonging to the private owner, whether acquired by grant from the Government or by prescriptive right;' that is to say, land acquired by prescriptive right. But, as every lawyer knows, you do not acquire land by prescriptive right, you may acquire it by prescription; but to speak of land being acquired by prescriptive right is language not familiar to lawyers. This, however, is a comparatively trifling objection.

"But there are graver objections to the proposed amendment. Compensation is claimed by the Hon'ble Mr. Moore whether the structure was lawfully or unlawfully erected. I am not now dealing with cases in which what was originally unlawful might, in the course of time, ripen into something not unlawful. The structure must be either lawful or unlawful. If it is lawful, then the amendment proposed by the Hon'ble Sir Henry Harrison would entitle the injured person to compensation. If it was an unlawful work, I do not think anybody, however liberal his views may be, however strong his notions may be with regard to what is called the sanctity of private property, would propose to give compensation for something which was unlawful. I find that the Hon'ble Mr. Moore, acting upon the opinion of the eminent Counsel consulted by the Chamber of Commerce,

objects to the use of the word 'lawful' in the Hon'ble Sir Henry Harrison's amendment. If that is the only objection which the ingenuity of Counsel can make to the amendment, I do not think we have much to fear from hostile criticism.

"Confiscation of private property is no doubt a very good cry, and it is a cry which it is very easy to raise; but is there any foundation, having regard to the amendment proposed by the Hon'ble Sir Henry Harrison, for saying that we are going to confiscate private rights? We are only going, under this Act, to authorise the Port Commissioners to remove unlawful structures; but, certainly, we are not going to confiscate anything which was lawful either when it was done or which, by reason of long enjoyment, has become lawful.

"I do not propose to follow the Hon'ble Mr. Nolan through the discussion which he has raised on the vexed question, as to the rights of the Crown or of the Government in this country to the foreshore of tidal or navigable rivers. The question is, no doubt, surrounded with a great deal of difficulty; and as the amendment proposed by the Hon'ble Sir Henry Harrison renders the discussion wholly unnecessary, I do not see the good of engaging in what, under the circumstances, would be a purely academic discussion.

"We render unto Her Majesty's Courts of justice the things which belong to them: and if I understood the Hon'ble Mr. Moore rightly, when this matter was before the Select Committee, the only grievance he felt was that we, the members of the Bengal Legislative Council, from our imperfect appreciation of the law on the subject, took upon ourselves to determine the particular cases in which alone compensation was to be allowed; instead of leaving the determination of those cases to those who are best able to deal with them.

"Now, the Hon'ble Sir Henry Harrison's amendment proposes to do what we were told we ought to do; whilst the amendment put forward by the Hon'ble Mr. Moore would virtually exclude, as the Hon'ble Sir Henry Harrison has already pointed out, from determination by the Courts of justice of those questions which we were told only two short months ago were eminently proper to be dealt with by Her Majesty's Judges."

The Hon'ble SIR ALFRED CROFT said:—"It is with great diffidence that I rise, and I do so merely to ask what is the interpretation of the last line of the Hon'ble Mr. Moore's amendment. It has been said by the Hon'ble Sir Henry Harrison, and confirmed by the Hon'ble Dr. Rash Behary Ghose, that

if the question is referred to the Courts of Law when the Port Commissioners and the private owner cannot come to an agreement, the Courts are bound to give compensation, although the structure has not been lawfully erected.

"It appears to me that the last line of the Hon'ble Mr. Moore's amendment bears no such construction. It does not say 'or by the Civil Court in which a suit may be brought to determine the amount of such compensation,' but it says 'to establish and enforce such right of compensation.' What is there in the amendment to prevent the Court from declaring that there is no such right? And if no such right can be shown, that is, if the structure has not been lawfully erected, the compensation awarded will be *nil*.

"But I would now take the opportunity of saying that each of the three amendments on the paper seems to me, in the light of the discussion that has proceeded, to be open to objection; and I should be very glad to know how these objections are met. I take first the Hon'ble Mr. Nolan's amendment. The objection to this seems to lie in the assumption which it makes that every wharf or jetty built below high-water-mark must have been unlawfully erected, unless the written consent of the Lieutenant-Governor of Bengal has been obtained. But I understand from what has been said by previous speakers that this is in some instances a doubtful matter, and if so, it cannot be right for this Council to declare that in no such case shall compensation be given, for that is a point which in such cases can only be decided by a Court of Law.

"Then the Hon'ble Sir Henry Harrison's amendment leaves out two points for which provision is made in the Hon'ble Mr. Moore's amendment. The first point is, that it does not state the grounds upon which it shall be lawful for the Commissioners to remove any such structure, a point for which the Hon'ble Mr. Moore's amendment does provide; because it says that the structure shall only be removed if the 'safety of navigation, or the improvement, maintenance or good government of the port so requires.' This point has been referred to by the Hon'ble Mr. Nolan, who objects to the proviso on the ground that it does not state who is to decide. It seems to me desirable that such a proviso should be adopted, qualified by some such words as 'when in the opinion of the Lieutenant-Governor the safety of navigation, &c., so requires.'

"The Hon'ble Mr. Nolan and other hon'ble members have conclusively shown that it would not be right to omit the word 'lawfully' before 'made' in the line preceding proviso (*a*) in the Hon'ble Mr. Moore's amendment, because it appears that works may be raised on private lands which still are not 'lawful',

because they interfere with public rights. If, therefore, no compensation ought to be given to private owners who erect structures which interfere with public rights, then we cannot accept an amendment which gives them a right to bring a suit for compensation.

"The Hon'ble Mr. Moore's amendment further provides for cases in which wharves and piers have been erected on behalf of the public. It provides that in case such works are removed or destroyed, corresponding works giving equal facilities shall be provided by the Commissioners. But the Hon'ble Sir Henry Harrison's amendment leaves out this proviso."

The Hon'ble SIR CHARLES PAUL said:—"That is provided for by the further section (85A) to be moved by the Hon'ble Sir Henry Harrison."

The Hon'ble SIR ALFRED CROFT said:—"In that case my remark does not apply."

The Hon'ble MR. ALLEN said:—"It appears to me that Act V (B.C.) of 1870 has hardly met with fair treatment in this Council up to the present. We may assume that the Bengal Council which passed Act V of 1870 was not less competent or less capable than the Council which meets here to-day; and we may fairly presume that in passing what has been said to be a very arbitrary measure, with little regard to the rights of private individuals, the members of that Council had just as much regard for the rights of private individuals as any one here present. Now if the law as a whole is examined, it will be found that not the smallest wrong was perpetrated by the section of that Act now under consideration. The principle upon which the Act of 1870 was based was, that the responsibility for taking care of the port of Calcutta, for levying tolls on trade and for raising money to construct works of utility, by which the facilities for shipping and unshipping goods would be increased, should not rest upon private individuals; but that a public body under the control of the Government should be incorporated, in which the management would vest: looking not for dividends to be divided among shareholders, or profits to be carried off by transitory merchants, but that this public body should borrow money and simply provide for paying interest thereon, not charging the shipping anything more than was necessary for that purpose.

"The portion of the river Hughli upon which works for the discharge of cargo could be constructed is limited, and therefore such a provision was very

reasonable: it constituted a monopoly which must prevail against all private rights in the port. As soon as this public body had constructed jetties and other necessary works, it was invested with the power of forbidding ships to go to any private jetty; they must come to the public jetties and pay the tolls levied at such jetties. At the time when that provision was framed, the Peninsular and Oriental Steam Navigation Company's jetty was the only jetty which had any existence, and therefore in forbidding the erection of jetties the framers of the Act of 1870 were touching no existing interests. They were merely laying down rules for the future, and warning persons who had private property on the banks of the river that they must use their private rights, subject to the rights of the Port Commissioners; and that they must not erect private jetties to compete with those erected by the Port Commissioners.

"Having made this provision with regard to jetties within the port, they further provided that in the case of jetties constructed in any other part of the river above or below the limits of the port, without the sanction of the Lieutenant-Governor, afterwards, should the port be extended so as to include that part of the river, such jetties should have no advantage over jetties which might be so constructed within the former limits of the port. They touched no jetty then in existence, but they warned private persons that they should not put up such jetties, without sanction from the Lieutenant-Governor, below high-water-mark. They touched nothing above high-water-mark, but they clearly asserted that the property in the foreshore below high-water-mark was in the Government. And whatever assumed or supposed right the zemindars may assert, there is the decision of the Privy Council that the property in the bed of the river Hughli below high-water-mark, belongs to the Government.

"When we in the Select Committee had to consider that section, we found as a fact that the provision in Act V of 1870 had not been used; but instead of allowing the law to remain as before, we made a suggestion that, when any private jetty below high-water-mark is removed, the Lieutenant-Governor may order the Commissioners to make compensation. For my own part, I consider that in doing that we gave the fairest conclusion to the whole question which it was possible to give. As a shareholder in several of these mills, I myself should infinitely prefer the mercy of the Lieutenant-Governor, to taking my stand on the supposed legal rights that the Chamber of Commerce pretend to maintain.

"Counsel's opinion has been taken in this matter. Mr. Woodroffe's name, no doubt, stands for a good deal; but, I must say that, as far as I have experience of Counsel's opinion, consulting Counsel is very much what consulting the Delphic oracle used to be. The consultor invariably gets an opinion which confirms him in the course which he had already determined upon. At the same time Counsel takes good care, while confirming his client in his opinion, whatever the result, that his own professional reputation shall in no wise suffer. The manner in which this is done is ingenious. Mr. Woodroffe's name is sufficient guarantee that any naked statement of law by him shall not be open to objection. His professional reputation would be terribly affected if he laid down a proposition of law which was incorrect; therefore, as far as the mere statement of the law goes, both the Advocate-General and I have no objection to what is laid down by Mr. Woodroffe. But the Chamber of Commerce imagine his opinion is entirely on their side. How is this result achieved? It is in the manipulation of the facts to which the law is to be applied. There the sympathetic effect comes in so that the client's feelings are flattered, and he feels himself a most ill-used individual. Let us see how Mr. Woodroffe does this. In paragraph 2 at the top of page 8, Mr. Woodroffe says:—

'Paragraph 6 of the Hon'ble Mr. Moore's minute of dissent gives instances in which grants of the foreshores of such rivers have been made to private individuals, or in which individual subjects have, by prescription, acquired rights in or over such foreshores in derogation of the rights of the public.'

"Well, Sir, I challenge a reference to that paragraph of the Hon'ble Mr. Moore's dissent. There I find no such instances given, but I find a very modest statement by the Hon'ble Mr. Moore of the possibility that such a case may exist. The actual instance to which the Hon'ble Mr. Moore refers, as I have learned the facts from him and the Advocate-General, is this: A certain Deputy Collector, when out at settlement work, found some logs of wood lying on the bank below high-water-mark, and thereupon made an extra assessment on the riparian owner in respect of the use he was making of the foreshore. Does this, as far as we know, unauthorized zeal of a Deputy Collector amount to a grant by the Crown or Government of the foreshore of the river? Under the colonnade of the Great Eastern Hotel here you may see a number of hobby-horses, boxes and other articles on the foot-path; suppose the municipal assessor, when next valuing the Great Eastern Hotel, clapped on an extra Rs. 5 or Rs. 6 on account of the benefit thus enjoyed;

is that to be deemed a grant to the Hotel of so much of the foot-path? Mr. Woodroffe apparently thinks it is.

"The second instance noticed by the Hon'ble Mr. Moore is this: A certain riparian owner acquired the land from a zemindar who professed also to convey the foreshore, and before doing so submitted the title to an eminent firm of solicitors, and this the Hon'ble Mr. Moore says is *primâ facie* evidence of title to the foreshore. Did he consult Mr. Woodroffe on that point? Would Mr. Woodroffe consider that the mere passing of the title through a solicitor's office was evidence of anything? Probably, if Mr. Woodroffe had been consulted, he would have told him that three-fourths of the litigation which arises is due to the blunders of eminent firms of solicitors. The fact that an eminent firm of solicitors passed a title, to my mind, goes a very small way. A flimsy title backed by money is, for practical purposes, no bad thing; and sometimes foundation enough on which to issue a prospectus and start a company. The eagerness to float companies has often been a zeal which has outrun discretion. Even if the legal point as to the foreshore between high-water and low-water is conceded to mill-owners, I believe it will be found they have transgressed in putting up jetties much below low-water-mark.

"In the second opinion of Mr. Woodroffe, the manipulation of facts is carried to a greater extent. The whole of the last paragraph of the second opinion consists in the quiet assumption of a state of things, the exact opposite of which we say is the true state. But to meet this the Hon'ble Sir Henry Harrison has introduced an amendment, by which every jetty lawfully erected is secure of compensation. What has Mr. Woodroffe to say to this? The first paragraph of his third opinion declares that, this amendment offers little security to existing jetties. This shows how from the first he had a strong suspicion that on the law of the case these gentlemen have not a leg to stand upon. No additional security for existing jetties, when every lawful jetty is to have compensation! If this is not telling them that they have no stronger case now to go to court with than they had before, then I am incapable of interpreting language.

"But the Hon'ble Mr. Moore has brought in the Government of India against us, as, in its proceedings of 1875, overruling and crushing up our Act of 1870. I very much regret the speech made by Mr. Hobhouse in 1875, as I think with all submission, that his remarks as to the intention of the Legislature in 1855 were made simply under a misapprehension, as to the bearing of the section

in that Act. I see great objections to assuming that the Council in years gone by was less competent or less able than the Council of 1875; and I have a shrewd suspicion that the Council of the Government of India in 1855 was as sensible and as careful of private rights, as the Council of 1875. The only change made, however, by the Act of 1875 was to introduce the saving clause about private rights into the earlier portion of the section defining the limits to which the port might be extended by the Local Government. But the Hon'ble Mr. Moore alleges that this restriction has a sort of coercive authority over us sitting in this Legislative Council. The Act of the Government of India of 1875 does not touch the Act of this Council. The section is purely a direction for the Executive Government. The Executive Government it is that has to extend the limits of the port, but when so extended, our Act of 1870, would come into full force throughout the whole area.

"The two Acts are of equal authority; the one legislature is equally sovereign as the other in authority. The Government of India, so far from having any intention to touch our Act of 1870, has shown its marked approval of it in the best way; for in 1879, in passing a Ports Act for Rangoon, the Government of India actually re-enacted section 57 of Act V (B.C.) of 1870:—

'In case any wharf, dock, quay, stage, jetty, pier, erection or mooring is, after the date on which this Act comes into force, without the consent in writing of the Local Government, made, erected or fixed below high-water-mark without the limits for the time being of the port, and thereafter the limits of the port are extended so as to include the place in which such wharf, dock, quay, stage, jetty, pier, erection or mooring has been made, erected, or fixed, the Commissioners may remove, fill up, or destroy such wharf, dock, quay, stage, jetty, pier, erection or mooring, without making any compensation therefor.'

"Would it be possible to have more complete evidence of thorough approval of our legislation than to find the Government of India in its legislative capacity, with all the talent available in its Legislative Council, instead of enacting a new section, bodily transferring our section into their Act?

"As to the amendment now before the Council. The Hon'ble Mr. Moore proposes that the Port Commissioners shall be authorized to remove a wharf, only in the event of its interfering with the 'safety of navigation, or the improvement, maintenance or good government of the port.' Any man who can once get his wharf on the bed of the Hughli, under the first clause of the Hon'ble Mr. Moore's amendment is protected from its removal, unless it interferes with navigation, lawful or unlawful. That, to my mind, is a most

fatal objection to the Hon'ble Mr. Moore's amendment. But there is another objection to the amendment, and that is, that there is not the least necessity for its existence, inasmuch as under the provisions of the Indian Ports Act of 1889, section 12,—

'If any obstruction or impediment to the navigation of any port subject to this Act has been lawfully made, or has become lawful by reason of the long continuance of such obstruction or impediment, or otherwise, the Conservator shall report the same for the information of the Local Government, and shall, with the sanction of that Government, cause the same to be removed or altered, making reasonable compensation to the person suffering damage by such removal or alteration.'

"The existence of this section in the Ports Act of the Government of India of 1889 does away with the necessity for the Hon'ble Mr. Moore's amendment, which simply proposes to re-enact in a feebler manner what is already the law. Mr. Woodroffe in his complaisant third opinion objects to the word 'lawful,' as being ambiguous. There is precedent enough, seeing the Government of India in the Act of 1889 uses this word. No ambiguity lies in the word 'lawful,' but the ambiguity lies in the peculiar circumstances under which most of these jetties have been run out. I take two objections to the first clause of the Hon'ble Mr. Moore's amendment—*first*, because it does not authorise the Commissioners to remove a jetty erected without any legal right, until it becomes an obstruction to navigation; and *secondly*, because it is a mere repetition of section 12 of the Ports Act of 1889: and these objections ought to be fatal to the amendment proposed by him.

"With reference to the amendment proposed by the Hon'ble Sir Henry Harrison, I certainly think it concedes everything that the Chamber of Commerce or the gentlemen in whose name it speaks have any right to expect. But, after all, what is the whole dispute? The whole discussion on section 85 is without any practical bearing. It is a mere fight in the air. I suppose some gentlemen here have kept dogs and know that on full moon young dogs bark furiously at the moon. The legend is, they fear, the moon is about to fall on them. This seems to me the best illustration of the fantastic fears which have stirred up the Chamber of Commerce gentlemen. They are alarmed lest something should happen which cannot possibly happen. The only possibility of its happening is if the port should be extended up the river to Barrackpore. Did any one ever hear of a port that moved up a river? I challenge any gentleman to show me a case, and especially up such a river as the Hughly. But I

quite agree with what has fallen from the Hon'ble Mr. Nolan, as to the importance of not letting in words into this Act which may lead to a false interpretation of the general law, and which would have effects far beyond the port of Calcutta. We know that throughout the mofussil on the banks of rivers the zemindars are asserting rights which are entirely incompatible with the free navigation of those rivers, and for the most part they succeed in carrying their point. Therefore, it is of the utmost importance not to introduce any words in this Act, which could in any way strengthen or back up encroachments of this kind."

The Hon'ble SIR CHARLES PAUL said:—"I wish to say a few words. I consider the subject not capable of any serious discussion. Whilst on the one hand we are to remember that in legislating we should not confiscate property belonging to others; on the other hand we should equally remember that we should not enact anything which would enable the Port Commissioners to throw away their money, and put it into the pockets of people who are not entitled to receive it.

"The Hon'ble Mr. Moore has correctly enunciated his first proposition, namely, that a person should be fully recompensed for the loss of his private rights. I quite agree with him; but if there are no private rights, public money should not be thrown away in paying for what does not exist. The question therefore reduces itself to this: Are there such private rights as have been stated to exist? In 1870, this Council decided that there were no such private rights, and enacted that nobody should, after 1870, make any wharves or jetties without the permission of the Lieutenant-Governor. To that provision of law exception had been taken, and we have been told that we should not decide upon such rights.

"And yet, looking to the Hon'ble Mr. Moore's amendment, it is plain that we are called upon to recognise such rights as he puts forward, and to give compensation for their removal. But if we are called upon to decide as to such rights, there are members of Council here present who are quite strong enough to decide upon such rights, and to decide upon them in the way in which Sir Arthur Hobhouse informed the memorialists that he would decide them if he were forced to do so. It was because this Council did not wish to decide upon such rights that a middle course has been taken in the proposal put forward by the Hon'ble Sir Henry Harrison.

"Now the Hon'ble Mr. Moore wants us to recognise those rights; he wants that, whenever a person puts up a wharf, or a jetty, or a stage on the foreshore of the river, you should, whenever it becomes necessary in the interests of the public to remove such wharf, or jetty, or stage, make compensation as if the man had a right to put up the wharf or jetty there. He wants us to recognise that principle. But if, in the opinion of persons competent to judge, there is no such right, then why should compensation be paid?

"Take the case which the Hon'ble Mr. Allen has put, that somebody, having no possible right to do so, presumed to put up an obstruction on the foreshore of the river. Would it be fair to give him compensation for the removal of that obstruction? The Hon'ble Mr. Moore would say, I do not ask for that. He says compensation should be given when the obstruction is put up on land belonging to the private owner, whether acquired by grant from the Government, or by prescriptive right or otherwise. 'Otherwise' may include by theft or by invasion. There is nothing to prevent a person clandestinely putting up an obstruction in a remote part of the river. Let us see whether the right is one which can exist or not.

"Mr. Woodroffe in his first opinion points out that the right cannot exist when it interferes with the navigation of the river. Therefore, if you ask for compensation, you must first satisfy the person who has to award the compensation that it does not interfere with the navigation of the river, because, if it does interfere with navigation, it is removable under the general law of the land and Regulation XI of 1825.

"Then, take the cases which the Hon'ble Mr. Moore gives of obstructions raised on lands granted by the Government. These grants referred to settlements made by Mr. Crow of lands down to low-water-mark. In considering those cases you would have to examine the meaning of the settlement. What was settled? What was given? Were they given for agricultural purposes, or for what purposes? If you come to the conclusion that they were given for agricultural purposes, that would give a right to cultivation down to low-water-mark.

"We all know that in the dry season lands are in some places cultivated down to low-water-mark, but it never was intended that the settlements so made should be in derogation of public rights of navigation. They could not in any way interfere with the rights of navigation. It never could have been

intended that under settlements of that sort a man, instead of growing crops upon the land, would have a right to put up a jetty down to low-water-mark.

"In the case of lands granted by the Government, the parties who ask for compensation would come in and say, this is our land and we can do what we like with it; and if we do put up a house or a stage, we have lawfully done it, and if you remove what we have put up, you shall pay in compensation. If the case is put in that way, it is a case that might admit of the answer already given. And, suppose such a case could be put, it would be a disputed case.

"Then is it right for the Hon'ble Mr. Moore and those who are with him to say that, although the case may well be disputed, whether land granted for purposes of cultivation can be used so as to interfere with the navigation of the river, yet such dispute should be shut out by legislation. Take the case of the consent of the Local Government given in writing, which would be generally considered as a strong case. Even, in such a case, a question may arise as to the competence of the Lieutenant-Governor to give his consent.

"We hear of people in Benares running their sewers into the river and thus polluting the river. I maintain that the consent of the Local Government would not justify any person in committing such a nuisance. The Port Commissioners are entitled to say that compensation should not be given for an unlawful act which was removable before by the executive authority, and which the law under consideration will enable him to remove. Does the Hon'ble Mr. Moore want us to decide whether in such cases compensation should or should not be given? I, for one, am quite prepared to decide that question. It has been ruled by the Privy Council in 6, Moore's Indian Appeals, that the bed of the river Hughli up to high-water-mark is the property of the Crown; and it being so decided by the Privy Council, we may take it, that every person who makes any obstruction in the bed of the river commits an offence for which he may be indicted under the law.

"In England the law is so strict that, if you put up a stake or post in the river you will be liable to be indicted and to be severely punished; and yet can it be contended here that, while on the one hand any person putting up a structure between high-water and low-water-mark can be indicted for a nuisance and subjected to fine; on the other hand he is supposed to possess such a right that he is to be entitled to compensation for the removal of the obstruction? A misconception of this kind could hardly go farther. Therefore,

if we are called upon to decide upon the alleged right, we should have no hesitation in deciding that we should give no compensation at all. But since it might be a harsh measure to make this Council usurp the place of the judges of the land and prevent people from making claims, we propose to give them every opportunity to do so. Therefore, the section provides that, whoever lawfully makes or erects any such structure shall be entitled to institute a civil suit for the award of compensation to him for the injury caused by the removal of such structure. This word 'lawful' is used advisedly. Where the facts constitute a thing to be lawful, it shall be lawful; but we say questions of that kind must be determined by the Courts. In the section proposed by the Hon'ble Mr. Moore we have the word 'otherwise.'

"The word 'lawful' is in no sense ambiguous: the word 'otherwise' is clearly so. The amendment first proposed in behalf of the Government was objected to, and now, when the word 'lawful' is put in in order to admit of every possible claim, objection is taken to that word. I do not wish to enlarge on the subject because I always give credit to persons setting up rights that they are actuated by sincere feelings; though I am bound to say that in this case this matter has been looked at with one eye kept open, and the other closely shut, so as not to admit of an adverse view. I think I have shown inconsistencies in the views advanced.

"We have steadily followed the lines laid down by Sir Arthur Hobhouse in the Act of 1875, which, he said, would not in any way prejudice or touch the rights of private property. If there is a cause of action, well and good: compensation will be obtained; otherwise the Courts will not give compensation. What is there to complain of? The Hon'ble Mr. Moore says, here is a wharf erected by me on land granted by Government. If that wharf does not interfere with the navigation of the river, the Courts will give compensation. But if it is erected otherwise, the Courts will not give compensation. How can this Council recognise and confirm private rights, the existence of which is asserted on one side and denied on the other side? The only remedy is to let the Courts decide whether or not those rights exist. If they want a decision on this point, I am quite ready to abide by Mr. Woodroffe's opinion. No lawyer in the land, much less a lawyer of the experience of Mr. Woodroffe, would come to a different conclusion. The law is clear; but, as the Hon'ble Dr. Rash Behary Ghose said, in this country, the question to whom the bed of a river belongs when the river has deserted its course and gone in another direction, is doubtful. It is

quite possible it belongs to the zemindar of the adjacent lands with whom the settlement has been made. But that is not the question here. We have here a river which remains in one channel, and in regard to which the Privy Council has decided that its bed is the property of the Government. We must either decide upon the alleged rights ourselves or leave it to the claimants to bring their suits; and the section has therefore been so drawn as to give every possible freedom for legal remedies (if any).

"I need hardly say anything further beyond pointing out, as observed by the Hon'ble Mr. Nolan, that as in the case of large tracts of land the declaration of the Government is taken as final; so where a notification of Government made under similar circumstances regarding a much less important matter, should be admitted to be final. That the parties should have a right to represent their case to the Government is right and proper, and I have no doubt that some rule or order to that effect will be made. The Government is most desirous to control the arbitrary power of the Port Commissioners, and one would have thought that, having regard to the future constitution of that body, the use of the word 'arbitrary' as applied to them, would disappear. The Bill, however, provides a restraint upon the power of the Commissioners by interposing the judgment of one who, without risking his position, could not act 'arbitrarily.' That people may arbitrarily interfere is possible, but there are checks to arbitrary interference. Government officers and others are subject to some sort of jurisdiction when they act arbitrarily, and the Courts of Justice can be trusted to interfere when public bodies act in infraction of the law.

"I entirely dispute the proposition involved in the section proposed by the Hon'ble Mr. Moore to be substituted for section 85, and I support the amendment of the Hon'ble Sir Henry Harrison, which, I think, is conceived in a spirit of fairness. The amendment proposed by the Hon'ble Mr. Moore would give compensation, whether the act done was lawful or unlawful, and that was a form of compensation which, I think, the Legislature would not be disposed to give out of the pockets of the Port Commissioners."

The Hon'ble MR. MOORE said in reply:—"It is exceedingly difficult for me to reply to all the objections which have been made to my amendment; especially when arrayed against me is one of the ablest advocates of the Bar, and I have not Counsel at my elbow to advise me. But I find one crumb of comfort

in his speech, that he is willing to trust to Mr. Woodroffe's opinion. (SIR CHARLES PAUL:—"His first opinion.") Well, it is in that first opinion that Mr. Woodroffe says, I have ample reasons for pressing for the protection of existing rights. I am very gratified to find that the whole tenour of the debate concedes this necessity which I have pressed, and there only remains the form of section to be agreed to in place of the existing one. I am perfectly willing to concede the main objections which have been raised to my draft. I see the force of the Hon'ble Sir Alfred Croft's objection that, it is not laid down who is to judge whether a structure is in the way of navigation, &c., and I am willing to meet this by adding in line 6 the words 'when in the opinion of the Local Government.' I also beg to repudiate the idea that I suggest, or ever intended to suggest, that any works unlawfully made should be compensated, for of course, if the law has been broken, the consequences must be abided; and in testimony of this, I am willing to add the word 'lawfully' in line 13 between the words 'was' and 'made,' though, I believe, I am in the alteration to a certain extent giving myself away. Other objections made are more in matter of detail, and if, as the Hon'ble Dr. Rash Behary Ghose pointed out, the words 'by prescriptive right' ought to read 'by prescription,' I alter them to such effect. With the changes thus made I commit my amendment to the votes of the Council."

His Honour the PRESIDENT said:—"Before putting the various amendments to the vote, I wish to say a few words for my own part And, first, I must say I agree with the Hon'ble Mr. Nolan that for practical purposes the whole fight—and a very interesting fight it has been—has been of a purely academical character, and it is a phantom from whichever point of view you regard it. In the first place, this section only takes effect in case of the limits of the port being extended. Whoever has read the history of the port, which was extended from Calcutta downwards—not because we wanted an extension, but because we wanted Budge-Budge—and really supposes that, under existing conditions, the Port Commissioners will desire to have the port extended up the river—I can only say I cannot understand on what possible grounds such a probability could be expected. From that point of view, I think the whole discussion has been a purely academical one; as also from another point of view, which was put forward by the Hon'ble Mr. Nolan, namely, that the Port Commissioners have had this section on the Statute Book for the last twenty years and have apparently never used it.

"But from another point of view, the discussion has been a very useful one. It has opened out, not without inconvenience perhaps, certain large questions, but it has enabled us to justify the object and history of this section. That some justification is necessary, I think you will admit, when I read to you what has been said about this Council by a gentleman who telegraphs home information from Calcutta to the *Times* newspaper. Speaking of this section, he describes it as follows:—'The inequitable and mischievous character of the power proposed to be conferred on the Commissioners in all cases of extension of the port to remove and destroy all buildings'—mark that, please,—not buildings in the bed of the river, nor buildings between high and low-water-mark—but 'all buildings which may have been erected prior to such extension without formal sanction by the Local Government, and without making any compensation.' This is what we are deliberately accused of doing on the authority of the gentleman who telegraphs to the *Times*. Then he goes on to say:—'This power of arbitrary confiscation would be a serious blow dealt at commercial interests, and would imperil mills and other commercial property exceeding in value a crore of rupees.' Perhaps my hon'ble friend can tell me what mills are referred to as in jeopardy to the extent of one crore of rupees. 'Corporations,' he continues, 'are proverbially high-handed'—(I believe in this case there are at least five members of the Chamber of Commerce on the Corporation referred to)—'and the callous conduct of the Government in like cases in the past by no means justifies unlimited confidence to their commercial justice in the future.'

"Now, that is the sort of assertion that goes about all Europe in regard to legislation conducted by this Council. To understand the section at all you must study the Act of 1870, and as it has been recently altered, a certain knowledge of the history of the whole question is necessary, which probably those who have been attacking us have not taken the trouble to acquire. That history has been gone into pretty fully in to-day's discussion, and I shall, for my part, only refer to it very briefly indeed. We need not go behind the Act of 1855, which was the basis of the subsequent legislation by the Government of India, namely, the later Act of 1875, and again the present Act of 1889 in regard to ports and port fees. That Act was, as has been pointed out here, a direction to Executive Governments in dealing with ports which were not brought under any special enactment. But subsequently—and among them Calcutta—various other ports have been brought under special

enactments. The section which was introduced into the Act of 1870 was no doubt introduced in conformity, or in supposed conformity, with the law of 1855 as it stood then. There was very little discussion in the Bengal Council about it. I have referred to that discussion and have it here. But what little discussion there was, consisted in the commercial members extending and not limiting its scope. As originally proposed, it was only in cases of extension of the port within one mile of the then limits, and the commercial members said: 'No. If this is the law, why limit it to one mile? Wherever the port is extended the law shall stand.' This was accepted. But it does not seem to have attracted very much attention at the time.

"Subsequently, when the Act of 1855 was before the Government of India for amendment, it attracted attention. There were two memorials presented, and the whole matter was discussed by Mr. Hobhouse. The memorials were based upon the claim of riparian owners to have the right of ownership in the foreshore, which the Act of 1870 had jeopardised, and which they wanted to be in some way, by some side-wind, acknowledged and admitted into the Act of 1875, and this Sir Arthur Hobhouse distinctly refused to admit. I need not read all he said, but there are one or two points I wish to make clear about it. He said:—

'Now, I mentioned that the riparian owners took a lively interest in this Bill, and the reason is that they are engaged in a controversy with the Port Commissioners, or the Bengal Government, or both, respecting some rights claimed by them over the foreshore down to low-water-mark. So they have addressed us on paper, and have also had the kindness to meet us in conference, and have urged that the new Bill ought to contain something to place them in some more favourable position, by recognising the fact of their claims, and at all events the possible validity of them, which, they say, is denied by their opponents. Now, there may be claims to private property of such a kind and on such a scale as to justify the Legislature in interfering to settle them. But these Calcutta controversies did not appear to us to be of such character. They appear to possess the characteristics of ordinary lawsuits, and we could not see why we should be called upon to interfere on one side or on the other. Indeed, I do not suppose that the riparian owners would be pleased if we interfered on the side of the public, and neither the Port Commissioners nor the Bengal Government have asked us to do so. Well, then, our position is that whatever right the public have against the claims of private property, and whatever protection private property has received against the claims of the public, are to be found in the existing Act of 1855 and have been thereby ascertained and regulated for twenty years. It may indeed be for more than twenty years, but we have not looked behind the Act of 1855. At all events for twenty years the public have had the

rights which the existing law gives them, and we could find no reason why those rights should now be lessened.'

"The result of that was, that Mr. Hobhouse distinctly said that he looked upon these questions between riparian owners and the Government of Bengal, or rather the Port Commissioners, as questions for litigation and not for legislation. He distinctly rejected the claim of the memorialists to put anything into the Act, which should imply that our section in the Act of 1870 was in any way wrong or erroneous. As the Hon'ble Mr. Allen has pointed out, this is the identical section about which such very strong language has been used in the *Times* newspaper, and this identical section was deliberately repeated word for word and incorporated in the Act passed by the Government of India for the port of Rangoon—not before the discussion of 1870, but in 1879, after the whole question was before them. The main object of the section of 1870 was, as I understand it, to give riparian owners a warning that, in future, if they chose to erect jetties, or any of those other erections, on ground below high-water-mark, they must get permission to erect it, otherwise they were doing it at their own peril, and they must not expect compensation for it. This has been the law of the land for the last twenty years, and since 1875, I do not think anybody has heard any complaint.

"The Select Committee in altering the Bill necessarily gave the wording of the Act of 1870 a retrospective shape. So 'shall' they necessarily changed into 'may have been' so as to make it in accordance with the law of 1870; but they did not include what they might have included—an exception for anything built or erected before 1870. If they had done so, I do not think there would have been a word altered: it would have remained exactly as it stood, and I do not see how anybody could have taken exception to it. But it is perhaps not a very serious matter, as I understand the number of jetties built previous to 1870 is something exceedingly small. Now, however, the whole principle has been taken exception to. Well, on receiving the protest of the Hon'ble Mr. Moore, as a member of the Select Committee, I discussed the question with the members of the Select Committee, and the outcome of it was, the amendment as it stood to be introduced into the Council some three weeks ago. Well, that amendment apparently did not meet altogether with the views of the Chamber of Commerce. The point about the amendment was, that it tried to state explicitly the only circumstances under which compensation could be claimed, but that it did not satisfy the hon'ble member opposite

(Mr. Moore), may be taken from the fact that his own amendment inserts the words 'or otherwise' after repeating practically what was in the amendment of the Hon'ble Sir Henry Harrison.

"Very well: finding that that did not satisfy him, and after reading the memorial of the Chamber of Commerce, the matter was subjected to further reconsideration, and the result was this section as it now stands. This section, as it now stands, is based exactly upon what Sir Arthur Hobhouse said in Council in 1875, that these questions between the Government and the riparian owners are questions not for legislation, but for the Law Courts. If they appealed to the Law Courts, the Law Courts would settle them. We decline to say or to give any indication of the circumstances under which compensation shall be given, except that the jetty or other erection shall have been lawfully erected and built. Nobody, I think, could criticise that section on the ground that the word 'lawfully' is not sufficiently clear. To say that it is ambiguous shows either one of two things—either that they want to include more than is lawful, or that they must be very hard put to find fault with our amendment. I must say for myself that I was inclined to prefer the amendment as originally drawn up, but now that I have seen the very weak nature of the objections taken to the amendment as it stands, I unhesitatingly give my opinion in favour of the new amendment.

"The only point which has not been really noticed in the discussion which has taken place to-day is, the objection that the Government of Bengal will not give the party injured an opportunity of being listened to. I observe that that remark was supported by my hon'ble friend on my left (Mr. Peacock), for many years Secretary to the Government of Bengal, and who ought to know perfectly well what does really happen. I do not think it is necessary to introduce any remedy for this in the Bill, but I am perfectly prepared to remedy it by a rule setting forth that in any case in which an application is made to the Government of Bengal for direction to demolish these jetties, no order shall be passed upon it until an opportunity has been given to the persons concerned of being heard. And, so far as I am myself concerned, I pledge this Government to carry that out.

"We have received, besides the memorial from the Chamber of Commerce, a memorial from the British Indian Association. That memorial covers a very large area of ground; it goes into the question of the rights of riparian owners all over Bengal. Now, I say emphatically that the questions raised by the British

Indian Association do not arise in connection with this question. The question is a very difficult one, and may be a very important one; but this Bill, at all events, is not the occasion on which to discuss it. It does not arise necessarily out of anything in this Bill, and 'sufficient to the day is the evil thereof.' When the time comes for raising the discussion, I have no doubt the British Indian Association will put their views before us in full form and with full force. But as I said before, after giving their memorial all consideration, I find that really it at no point touches the question that now comes before us.

"The only question remaining is, that as between the amendment proposed by the Hon'ble Mr. Moore and the amendment proposed by the member in charge of the Bill. I am bound to say that the alterations which the Hon'ble Mr. Moore has now made in his amendment, have taken away a very considerable amount of objection to it. But, on the whole, I think that the Hon'ble Sir Henry Harrison's amendment is, if not in appearance, in reality more liberal, because it does not pretend to define the circumstances under which compensation may be claimed as the Hon'ble Mr. Moore's does; and I think the Hon'ble Sir Henry Harrison's amendment the more convenient one and a better drafted one, and I myself prefer it."

The Hon'ble MR. MOORE moved that the following revised section be substituted for section 85 of the Bill:—

"85. In case any wharf, quay, stage, jetty, pier, erection or mooring may have been or hereafter shall be, made, erected, or fixed within or without high-water-mark without the limits of the port, and thereafter the limits for the time being of the port shall be extended so as to include the place on which such wharf, quay, stage, jetty, pier, erection or mooring shall have been made, erected, or fixed, it shall be lawful for the Commissioners, when in the opinion of the Local Government the safety of navigation, or the improvement, maintenance or good government of the port so requires, to remove, fill up, or destroy such wharf, quay, stage, jetty, pier, erection or mooring:

Provided that when any such work has, under this section, been so dealt with, the Commissioners shall, when such work was made on behalf of the public for the convenience of public traffic, make or provide for the use of the public such sufficient wharves, quays, stages, jetties, piers, erections or moorings as the Local Government may direct, and shall, when such work was lawfully made by any private person for the convenience of private traffic—

(*a*) on land belonging to the Government, with the previous consent of the Local Government in writing, or of which the making, erecting, or fixing has been subsequently sanctioned by the Local Government in writing; or

(*b*) on land belonging to the private owner, whether acquired by grant from the Government, or by prescription, or otherwise,

make compensation therefor to the owners thereof to such an amount as may be determined by agreement by and between the Commissioners and such owners, or by the Civil Court in which a suit may be brought to establish and enforce such right of compensation."

The amendment being put, the Council divided :—

Ayes.	*Noes.*
The Hon'ble Raja Rameshwar Sing Bahadur.	The Hon'ble Dr. Rash Behary Ghose.
The Hon'ble H. Pratt.	The Hon'ble Shahzada Mahommed Furrokh Shah.
The Hon'ble C. H. Moore.	The Hon'ble Sir Alfred Croft.
The Hon'ble F. B. Peacock.	The Hon'ble Sir Henry Harrison.
	The Hon'ble T. T. Allen.
	The Hon'ble P. Nolan.
	The Hon'ble Sir Charles Paul.
	His Honour the President.

So the Motion was lost.

The Hon'ble SIR HENRY HARRISON'S amendment that, for section 85 of the Bill, the section as proposed by him be substituted, was put to the vote and agreed to.

The Hon'ble MR. NOLAN, by leave of the Council, withdrew the following motion of which he had given notice :—

'That the existing law on the subject, as contained in section 57 of Act V of 1870, be left unaltered. Section 85 of the Bill will then run as follows :—

'In case any wharf, dock, quay, jetty, pier, erection or mooring shall, after the seventeenth day of October, 1870, without the consent in writing of the Lieutenant-Governor of Bengal, have been fixed, excavated, erected, or built below high-water-mark without the limits for the time being of the port, and thereafter the limits of the port shall be extended so as to include the place in which such wharf, dock, quay, jetty, pier, erection or mooring shall have been fixed, excavated, erected or built, it shall be lawful for the Commissioners to remove, fill up, or destroy such wharf, dock, quay, jetty, pier, erection or mooring without making any compensation therefor.'

[*Sir Henry Harrison.*]

The Hon'ble SIR HENRY HARRISON moved that, between sections 85 and 86 of the Bill, the following section be inserted:—

'85 A. Whenever any wharves, quays, stages, jetties, piers, erections or moorings have, under the last preceding section, been removed, filled up, or destroyed, the Commissioners shall make or provide for the use of the public such sufficient and convenient wharves, quays, stages, jetties, piers, erections or moorings in the place of those that may be removed, filled up, or destroyed, as the Local Government may direct'

The Motion was put and agreed to.

The further consideration of the Bill was postponed till the next sitting of the Council.

The Council adjourned to Saturday, the 22nd February, 1890.

CALCUTTA;
The 20th February, 1890.

C. H. REILY,
Assistant Secretary to the Govt. of Bengal,
Legislative Department.

Reg. No. 866d—300—3-3-90.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., Cap. 67.

THE Council met at the Council Chamber on Saturday, the 22nd February, 1890.

Present:

The HON'BLE SIR STEUART COLVIN BAYLEY, K.C.S.I., C.I.E., Lieutenant-Governor of Bengal, *presiding*.

The HON'BLE SIR CHARLES PAUL, K.C.I.E., *Advocate-General*.

The HON'BLE F. B. PEACOCK.

The HON'BLE P. NOLAN.

The HON'BLE T. T. ALLEN.

The HON'BLE SIR HENRY HARRISON, KT.

The HON'BLE SIR ALFRED CROFT, K.C.I.E.

The HON'BLE DR. MAHENDRA LAL SIRCAR, C.I.E.

The HON'BLE C. H. MOORE.

The HON'BLE H. PRATT.

The HON'BLE SHAHZADA MAHOMMED FURROKH SHAH.

The HON'BLE DR. RASH BEHARY GHOSE.

CALCUTTA PORT BILL.

The Hon'ble SIR HENRY HARRISON moved that the clauses of the Bill to consolidate and amend the law relating to the Port of Calcutta, and to the appointment of Commissioners for the said Port, be further considered for settlement in the form recommended by the Select Committee.

He said:—"In moving that the Bill be taken into further consideration, I would like to say one word regarding the notice which I have given for the suspension of the Rules. I am in hopes we may find that there is no matter of serious controversy between us to-day, and therefore there is no reason why the Bill should not be passed at this meeting of the Council. At the same time I will not press that motion, if we find that there is any considerable difference of opinion. I may say that there is nothing further from my mind than to ask the Council to rush the Bill through, or to force its hands in any way. But supposing we find the remaining sections are settled by general agreement,

it seems a great pity that the Legislative Council should be called together for a formal matter. It will depend a great deal upon the course the proceedings may take."

The Motion was put and agreed to.

The Hon'ble SIR HENRY HARRISON also moved that the following proviso be added to section 96 of the Bill:—

'Provided that any order made and published under this section which shall have the effect of rendering it unlawful to land or ship any goods out of, or into, any vessel at any wharf, quay, stage, jetty or pier made by any private person for the convenience of private traffic shall entitle the owner thereof to sue for compensation, and to recover the same compensation, if any, that he would have been entitled to sue for and recover, had the wharf, quay, stage, jetty or pier been removed, filled up, or destroyed under the provisions of section eighty-five.'

He said:—"The amendment I move should be considered from two different points of view. On the most important, viz. the point of principle, I have found myself entirely in accord with the hon'ble member who represents the views of the Chamber of Commerce, and that is, that if any jetty, wharf or other structure is closed under section 96, there is no reason why the owner should be put in a worse position than when it is dealt with or destroyed under section 85. It may be, because, there is a certain affinity between shallowness and clearness; but, certainly, whatever the cause may be, it seems to me manifestly clear that section 96 is not intended as a section for evading the principle we have conceded in section 85. If the existence of any private wharf, jetty or other structure is disadvantageous to the good administration of the port, or interferes with the navigation of the river, it becomes the duty of the Port Commissioners to obtain the leave of the Government to close it or to remove it; or it may enter into terms with the owner of the wharf or jetty, for the proper use of it under section 95.

"The primary object of section 96 is, that when the Commissioners have been at the expense of putting up wharves for the convenience of the public, the well-being of the trade of the port may depend upon the Commissioners being able to put such wharves to their full use; for if that cannot be done, then the loss would be incurred simply at the expense of the trade of the port. Therefore, it is necessary that the Commissioners should have power to insist upon the trade coming to the wharves which they have provided.

"Incidentally, that gives them ample power of acting against private jetties or wharves which they may have allowed to stand under section 85; because they may say that, all the trade within a certain distance, must come to their jetties and wharves, and therefore the use of any other jetties or wharves which may have been in use up to that time must be stopped. At the same time it seems perfectly clear that, it will not in the least degree be just that the Commissioners should be put in a better position than if they had dealt with the jetties and wharves under section 85. Therefore, the intention is, that the owners of these private structures should be placed in precisely the same position as regards the right to compensation, as they would have been if the Port Commissioners had thought fit to proceed directly under section 85.

"It may be said that you ought not to give the same compensation for jetties which are allowed to stand, as for those which are removed. This is a small point, and the objection appears to me insignificant. If you do not deprive them of the jetty itself, but only close it, possibly it may be of some material use; but, even in that case, I think it far better to safeguard the interest by saying, that they shall have the same right to compensation which they would have had if the jetty had been removed altogether, than to make any wire-drawn distinction as to what deduction should be made from the compensation. So much as to the principle, and I hope the Council will be entirely in accord as regards the principle.

"Then comes the other difficulty, as regards its wording. A difficulty arises as regards the omission or inclusion of the word 'docks' which cannot be avoided, because section 85 makes no allusion to private docks. Section 85 only refers to the removal of structures below high-water-mark, whereas section 96 refers to docks. It says:—

'When any dock, wharf, quay, stage, jetty or pier for receiving, landing or shipment of goods from vessels (not being sea-going vessels) shall have been made and completed with all proper appliances in that behalf, it shall be lawful for the Commissioners in meeting, with the sanction of the Local Government, by an order published in three consecutive numbers of the *Calcutta Gazette*, to declare that such dock, wharf, quay, stage, jetty or pier is ready for receiving, landing or shipment of goods from vessels (not being sea-going vessels); and in the same way to order that within certain prescribed limits, to be therein specified in that behalf, it shall not be lawful, without the express sanction of the Commissioners, to land or ship any goods out of, or into, any vessel (not being a sea-going vessel) of any class specified in such order, except at such dock, wharf, quay, stage, jetty or pier.'

"As a matter of fact there are no docks in existence for landing and shipping goods from inland vessels, and if they exist, they must be on private land. Therefore, there is this difficulty. If we put in the word 'dock,' then we have the difficulty in regard to section 85; and if we omit the word 'dock,' then we do not meet the case of a dock being found within the limits of the port. But as matters stand, it is not a matter of consequence, because there are no such docks in existence; and it is extremely improbable that any private person will be at the expense of constructing a dock, for the loading and unloading of goods from inland vessels: as for that purpose, jetties or wharves are so manifestly more convenient.

"If the Hon'ble Mr. Moore thinks that the section would be improved by the insertion of the word 'docks,' then the Council would be in a difficulty, because we should be referring to a section which did not authorise it. But the better course seems to me to be to leave out the word 'docks,' seeing that there are no docks of this kind to be closed. You will see that the Hon'ble Mr. Moore has withdrawn his amendment in which the word 'docks' was inserted, but I think he will raise no objection to the word being omitted in this section; and, therefore, I move that the following proviso be added to section 96 of the Bill:—"

'Provided that any order made and published under this section which shall have the effect of rendering it unlawful to land or ship any goods out of, or into, any wharf, quay, stage, jetty or pier made by any private person for the convenience of private traffic shall entitle the owner thereof to sue for compensation, and to recover the same compensation, if any, that he would have been entitled to sue for and recover, had the wharf, quay, stage, jetty or pier been removed, filled up, or destroyed under the provisions of section eighty-five.'

The Hon'ble MR. MOORE said:—"I would explain that I withdrew my amendment to section 96, on the understanding there was some technical objection to it; and because to the best of my belief, the one submitted by the Hon'ble Sir Henry Harrison meets the principles I have been contending for, of proper compensation being made for acquiry of private property, which has already been admitted and legislated for by this Council in section 85 now passed, and has just been clearly expressed again by the Hon'ble Sir Henry Harrison. This reform, however, would have been entirely nullified if section 96 were left as it now stands in the Bill; for it gives absolute powers of closure of private wharves, which is of course exactly equivalent in effect to seizure and removal under section 85, without any provision for compensation to the parties injured, and a

very serious injury might be done, if, for instance, for power to ship and land goods at their doors, there were substituted a mile or so of cartage to ship and land goods at a Commissioners' jetty distant from them which, under this section, the Commissioners have power to enforce upon any private person, should it suit their purposes to do so.

"I have no objection to the omission of the word 'dock,' because the section deals with landing and shipping; and in the interpretation chapter of the Bill, the word 'wharf' is described as referring to any place used for landing and shipping goods. I trust there is no necessity to urge on the Council to carry this amendment; and that the argument against it may not be brought forward that, because it was not done in 1870, when the subject was thoroughly threshed out, it should not be done now. The principles involved in the alterations in these sections were not threshed out in 1870. No one interested noticed or foresaw the effects of the sections as passed, nor the gross abuses of power to which it might lead, until actual experience forced it upon public notice.

"That experience found in the manipulation of this very section 90, as set forth in the memorial of the Chamber of Commerce, I can assure this Council, contains no exaggeration at all, and is in itself ample justification for the addition to it of the proviso moved by the Hon'ble Sir Henry Harrison. It conveys, I believe, nothing more than the acceptance of the principle now contained in section 85, and admitted at our last meeting in the plainest terms by the Hon'ble Messrs. Peacock and Nolan, as an undisputably fair axiom, viz., that private property must not be subjected to summary confiscation, but only made liable when circumstances of public need necessitate it to be acquired on payment of proper compensation.

"I would add one point. I am not sure whether, as the section now reads, it is necessary to get the sanction of the Local Government before notifying the closure of a private wharf. I only read it to apply to notifying that the Commissioners' wharf is ready. If, therefore, such is the reading, I would wish to move that the necessary words be added to make it obligatory on the Commissioners to obtain the Local Government's sanction to the Act before closing a private wharf."

The Hon'ble MR. NOLAN said:—"I rise somewhat early in this discussion, because, while quite accepting the principle of this amendment, I see objections to the manner in which it is worded, and think that, before it can be accepted,

it should be recast. In the first place, it confines the payment of compensation to cases in which orders are issued under section 96 closing wharves to country boats; although it seems that, on the principle enunciated by the last speaker and accepted by the mover, compensation should also be given where wharves are closed to sea-going vessels by an order under section 96. And in the second place, I consider that the compensation, when allowed, is calculated on a wrong principle, and is excessive in amount. The amendment would entitle the owner of a wharf or pier to be compensated for a simple prohibition to land one class of goods to the full amount which he could claim, if his wharf had been entirely destroyed. This is a novel rule, and I fail to see anything in its favour. Take, for example, a wharf constructed to land coal from sea-going vessels: if, by an order under section 96, the Port Commissioners prohibit the owner from using it for country boats, they probably do him no harm whatever; and it would be absurd to make them pay, as if they had altogether annihilated the value of his property. It should be remembered that the definitions of the Bill are very wide—almost anything near the river may be treated as a dock or pier, or wharf, and its full value demanded on the issue of an order of the kind contemplated. I do not understand how the Hon'ble Sir Henry Harrison stated that, there is no private dock in Calcutta; a 'dock' being defined to include 'all wharves, warehouses and tramways.' [SIR HENRY HARRISON:—"Appertaining to a dock."] That is so; but a 'wharf' is defined as including any foreshore used for loading; a pier to include any floating barge or pontoon for whatever purpose used. Now, if we prohibit landing certain goods on a foreshore, should we, as now proposed, pay the full value of the foreshore? It remains useful for other purposes. And if we pass a similar order in regard to a pontoon, must we give the price of the pontoon as if it had been consumed by fire? The measure of compensation should be the loss caused by the order passed, not the loss which would accrue had action been taken of a nature entirely different. The matter will become very serious if the port extends or changes. This is not like the section we discussed last Saturday, a provision never enforced, but the key to the whole work of the Port Commissioners.

"I am inclined, also, to think that the principle on which compensation is to be assessed should be considered further, with a view to excluding the large claims which will be made on account of loss by port dues. These dues will be useless, if the Commissioners have to indemnify beforehand those who will have to pay them. The amendment has not been long in the hands of members, and

I have but recently considered it in detail; being under the impression that it was accepted by all parties and would be found unexceptionable. I am not, therefore, prepared with a draft embodying the view put forward, but hope that the member in charge of the Bill may be able to meet these objections by modifying his motion."

The HON'BLE MR. ALLEN said:—"When I first saw the amendment standing in the name of the hon'ble member in charge of the Bill, I had resolved to offer the strongest opposition I could find to urge against it; but that determination was afterwards somewhat modified by the consideration that, under the present condition of things, it has little or no practical bearing. But the amendment offends grievously against principle, the common principle of honesty.

"The Hon'ble Sir Henry Harrison and the Hon'ble Mr. Moore have both treated this amendment of section 96 as if it was simply an appendage to the amendment of section 85, which the Council accepted on the last occasion. This I regard as an entire mistake. The provisions of section 96 are totally and altogether separate from any of the provisions contained in section 85, nor do they relate to the same state of things. Section 96 operates on the port as it now exists. Section 85 comes into operation only in the event of the port being extended.

"On the last occasion you, Sir, were pleased to remark that the whole discussion stirred up by the Chamber of Commerce was for nothing better than a phantom. The amendment which is now before the Council is a provision to guard against danger from the accident of a phantom. Were this matter on the footing on which both the Hon'ble Mr. Moore and the Hon'ble Sir Henry Harrison have treated it, I should no more think of offering a word of opposition, than I would if the Hon'ble Sir Henry Harrison had chosen to stand godfather to a provision to secure damages for infringement of patent to those joint-stock companies of Laputa, who held exclusive right of extracting sunbeams from cucumbers. Under present conditions, no practical effect can follow either from the section itself or the amendment.

"But, as a matter of fact, there may arise circumstances when they would assume importance. A serious principle is involved in the amendment before the Council; and, under certain conditions, the question may become one of practical importance. Our section 96 of the Bill is no new section. The Justices for

the Port of Calcutta were appointed in 1866, when, for the first time, an attempt was made to afford facilities in the landing and shipping of goods; and they were vested with certain powers. Among those powers were these, that when they had provided sufficient facilities for discharging and loading, they should have the right to insist upon ships using those facilities and paying tolls for them. Those powers had been given by the Act of 1866, and were continued in the Act of 1870, which distinctly gave a monopoly of the right to levy tolls; and the latter part of this section, by which they were authorised to forbid the use of other places than those they had provided, was simply the means by which that monopoly was declared.

"Furthermore, a section was put into the Act (section 33 of Act V of 1870) by which they were strictly prohibited from alienating any powers which, under the Act, they had acquired. The case, under this section, is exactly similar to that of a public ferry. As soon as a public ferry is established and let to a farmer, that farmer is entitled to a monopoly to cross over passengers within a distance of two miles below and two miles above his ferry. Within that distance of four miles, no person can run a ferry in opposition to him. This is the principle which the section of Act V of 1870, as it stands, rigidly insisted upon.

"Now, Sir, having created this monopoly in favour of the Port Commissioners, they were by Act IV of 1880 authorised to go into the market and borrow money on the security of their monopoly, and by the same Act their tolls were pledged to the public as security. The amendment which is now before the Council, distinctly cuts at the root of that monopoly. It recognises the right of private competition with the Port Commissioners; and having destroyed the monopoly, it says that, before the Commissioners can re-establish that monopoly, they must buy up all the rights along the bank of the river. I consider, therefore, Sir, that in passing this amendment, we shall be guilty of a serious breach of faith with those persons who have advanced their money.

"It may be quite possible that the assets in the hands of the Port Commissioners are sufficient to meet all liabilities. But be that as it may, I consider the Council should not, after having passed an Act pledging certain rights and certain revenues as security, come forward now, and without the consent of the debenture-holders, without even consulting them as far as I know—probably if they had been consulted they would have consulted Mr. Woodroffe, and we should have had a separate opinion as to how these persons' (the creditors)

interests will be affected, then perhaps the Council would have been in a position to select a safe path on which to travel by taking the resultant of the conflicting responses. But without the consent of the debenture-holders and without any regard for their interests, and without consulting them, to cut down the monopoly by these words will, it appears to me if the proposal be carried, reflect no credit on this Council.

"As a matter of fact, however, I believe that no result will follow under the present condition of things, even were the legal monopoly cut away; and for this reason, that between Kidderpore and Cossipore, the present practical limits of the port, the whole of the foreshore on this side of the river is already the property of the Port Commissioners. Though legally the monopoly would be destroyed, practically the monopoly would be continued; and for this reason, I do not think it worth while to offer much opposition to the proposal. But I must insist on the point of principle. I must point out that, if such circumstances arise as that this foreshore between Kidderpore and Cossipore should not be available for the landing and shipping of goods, and it should become necessary that the shipping be sent further down where the whole foreshore belongs to private individuals, the consequences, if this amendment stands in the law, would be something beyond all calculation in the way of expense. As long as the monopoly of tolls exists in the Commissioners, whether this part or some other part of the river bank is used for shipping, it is perfectly immaterial to the debenture-holders. As long as the shipping comes to the river, and the tolls are levied, their security will be untouched. But if the monopoly be taken away, and anything happened to compel the Port Commissioners to remove their operations where the wharfage rights of every foot of the land would have to be bought, it appears to me that the security of the debenture-holders would be uncommonly weak.

"We know that at present the general opinion about the docks at Kidderpore is, that they are very likely to prove a white elephant, to provide provender for which may use up a large part of the surplus resulting from the other sources of revenue which the Port Commissioners enjoy. This may be true or it may not be true, still its possibility ought to be a reason why caution should be exercised in touching in any way the security upon which money has been advanced.

"In the definition of 'wharf' which is given in this Act, it will be found that the word 'wharf' includes 'any bank of the river which may be

improved to facilitate the loading or unloading of goods.' Suppose now that the river between Kidderpore and Cossipore became useless, six coolies working for six days on the banks at Garden Reach would create a wharf, and every owner who has a frontage to the river can thus, by sloping off a part of the bank, create a wharf, by which he would be entitled to compensation at any time, should that neighbourhood be afterwards utilised by the Port Commissioners for discharging cargo. The amount of compensation for which the Commissioners would thus be rendered liable would be vastly greater under those circumstances, than possibly either the Hon'ble Sir Henry Harrison or the Hon'ble Mr. Moore has any idea of. I take it that, when a jetty-builder comes in under section 85, the measure of compensation he would receive from a Civil Court would be at least twenty years' purchase of the toll on every bale of goods that passes over the wharf destroyed, and twenty years' purchase of the cartage to which he would be rendered liable by the removal of his jetty. If, therefore, circumstances should give any practical effect to this amendment, the expense would be such as to swamp the Port Commissioners completely.

"I think, therefore, that on the question of principle, which is what I am mainly interested in, the Council will be wise to allow the law to stand as it has existed for the last twenty-four years; and as it has again been enacted by the Government of India in the Act passed ten years ago for the port of Rangoon, and which principle is also asserted in the Act passed by this Council three years ago for the port of Chittagong. By letting this amendment come into our Act, we shall break completely adrift from all the Port Acts passed for this side of India from the commencement.

"If the debenture-holders had been consulted, it is highly probable they would have taken the opinion of Mr. Woodroffe; and there can be little doubt what the opinion of Mr. Woodroffe would have amounted to, had he been consulted. It is safe to say that Mr. Woodroffe would have concluded thus: 'If the Bengal Council accept the amendment of section 96 proposed by the Hon'ble Sir Henry Harrison, the Government of India should be memorialised to withhold its assent to the Act.' "

The Hon'ble Sir Charles Paul said:—"When the poor inhabitants of the Suburbs of Calcutta set up a cry that they would be ruined by the excessive taxation to which they would be subjected by reason of the extension of the municipal limits, I think the mover of the new Municipal Act told

them that it could not be helped, because the extension of the municipal limits was necessary for the improvement of the health of Calcutta, and that private circumstances and private losses must give way to the public good. I think that precisely the same argument will apply here, that it is necessary for the improvement of the port of Calcutta, that the Port Commissioners should be armed with powers for re-imbursing themselves for the duties incident to their office.

"The Port Commissioners have, for a great many years, kept the river in a proper state and incurred considerable expense; the gentlemen who have private wharves have had the benefit of all that expense without paying anything towards it, and from the point of view I look at it, they have been sufficiently remunerated for any private wharves they have constructed, namely, they have had the use without paying for the improvement of the river which enabled them to use those wharves.

"Now, on principle, what is the grievance of which they complain? As to the analogy which has been put forward by the Hon'ble Sir Henry Harrison with an air of fairness, I wish to say a word. I shall presently show that there is no analogy between the two cases. They cover entirely different grounds, and come under entirely different heads. They complain that, they have hitherto been in the habit of landing and shipping their goods in a convenient way at wharves erected by themselves; that, by extending the limits of the port so as to include those wharves within such limits, they will be disabled from using the conveniences which they had been using before, and they will be compelled to pay tolls for the landing and shipping of their goods. That is the main inconvenience that is thought of here, and I hardly think that the compensation which they claim is simply the value of the structure or thing which they have put up. If that is all, the loss which they will suffer will be very little indeed, because they have had the use of those structures for a number of years. But they wish to get some means of recouping themselves with regard to the tolls which they will have to pay; or, in other words, they wish to get a monopoly of their own against other persons, their competitors in trade.

"The object of the amendment is to put them into a more favourable position; but if that object is once perceived, it is enough for the Council to say that such a position cannot be tolerated. If the object is simply to have the value of their structures, wharves, jetties and so forth, then by all

means let it be put in exact words, namely, that where a person is deprived of the use of a wharf by reason of the operation of section 96, the Port Commissioners shall pay him the present value of the wharf, plus the appliances used with such wharf. Let the amendment be so devised, but the present vague way of putting it, is objectionable. I will now refer to an Act of Parliament by which privileges have been taken away without the grant of compensation. The Statute, 16 and 17 Vic., Cap. 93, was passed for the levy of tolls in certain harbours in Scotland.

"Under the provisions of this Act, the Burghers were entitled to apply it. If they did not wish to apply it, they need not. But if they applied it, the effect produced by section 15 was the abolition of all exclusive privileges and the levy of tolls equally on all persons. Here is an Act which, when applied, took away all privileges which had previously existed without providing compensation. Now the object of the Hon'ble Sir Henry Harrison's amendment is, to give compensation for this privilege of landing and shipping goods from private wharves.

"I say that, the object of section 96 is to take away a privilege which these persons have hitherto enjoyed; and the idea of putting every person on precisely the same footing is not inequitable, if it be conceded that the object is the improvement of the navigation of the river. And that being so, no compensation should be given. Although section 96 provides for no compensation, yet this amendment says that, compensation may be given for the immediate results of that provision. What is the meaning? The proposed proviso says, 'to recover the same compensation that he would have been entitled to sue for and recover, had the wharf, &c., been removed, filled up, or destroyed under the provisions of section 85.' Under this section, a claim may be made for the value of the structure and all the profits derived therefrom; in other words, the capitalised amount which will represent the value of the tolls and appliances for twenty years. No doubt, the amendment has been made as guarded as it possibly can be. Still there is a difficulty about it, and I say that, if the amendment is persevered with, it must be drafted on other lines. The exact thing for which you are to pay compensation must be stated.

"Now, it is stated by the Hon'ble Sir Henry Harrison that, if you pay compensation for the removal of a jetty, why should you not also pay compensation for prohibiting the use of a jetty? I shall give a very short answer to that. I say that they are two very different things. The removal of a wharf

prevents the person who had that wharf from using it. But a prohibition to use a particular wharf does not necessarily have the same effect as its removal. If the Commissioners do not remove or destroy a particular wharf or jetty, and allow such wharf or jetty to remain, they are entitled under the provisions to permit the use thereof. There appears to be no impediment to their entering into a contract for the landing and shipping goods as before upon the payment of tolls, less the value of labour and appliances.

"The argument by analogy is a powerful argument, if you can show the analogy. The difficulty is to show the analogy.

"There is another objection. This Bill is divided into various parts. Now section 85 comes under Part VII, 'Of the erection of wharves, quays, stages, jettys, piers or moorings; and section 85 allows of the removal or destruction of private wharves, &c. Then we come to Part VIII of the Bill, regarding the landing and shipment of goods. These two parts of the Bill treat of two distinct matters. One has nothing to do with the other.

"One further remark remains, and that is, the exceptional character of the legislation proposed. The Hon'ble Mr. Nolan has pointed out—and I think it is the very best possible answer to give—that if section 96 is to be amended in this way, section 94 should also be amended. The general commercial interests under section 94 are not represented; but though they are not represented, as no claim is advanced, you are bound to give those who will be affected under section 94 compensation in the same way as is proposed under section 96. We have a small conclave of jetty-owners coming forward who have been described as the possessors of property of enormous value on the banks of the river, and we have been called upon to pass this exceptional legislation to meet a clamour which has been raised. That is a matter to which I do not think we should yield."

The Hon'ble DR. RASH BEHARY GHOSE said:—"I accept, without the slightest reservation, the principle which underlies the amendment of the hon'ble member in charge of the Bill; the right to claim compensation being, as I understand, confined to cases in which the works mentioned in the amendment have been lawfully erected, or have been used for a very long time. It has been said that if the principle is sound, it ought to hold good also in the cases provided for by section 94 of the Bill: that may be so. But that is no answer to the amendment which has been proposed by the Hon'ble Sir Henry Harrison,

because, I take it that, two wrongs cannot make a right. It may be a perfectly good reason for adding a similar amendment to section 94; but surely, it is no reason whatever for saying that, although in other respects the principle is a good and proper one, it ought not to be accepted because you have not applied it to a certain class of cases to which, if the principle is a proper principle, it ought to apply?

"The Hon'ble Mr. Allen, who spoke in opposition to the amendment, pointed out in the first place that a provision similar to that contained in section 96 had been in the Statute Book since the year 1866, and that nobody ever thought of making any complaint till the Hon'ble Mr. Moore, or rather the Chamber of Commerce whom he represents, thought of objecting for the first time when the present Bill was before the Select Committee. The whole contention, if I may say so, is, that the injustice was perpetrated long ago, and that therefore it should be left unredressed. But if the principle recognised by the amendment is a proper one, I do not think that the mere fact, that the wrong has been in existence for thirty or for fifty years can invest it with the privilege of prescription. The Legislature is not fettered by any statute of limitations.

"I will assume for the purposes of my present argument that, the principle of allowing compensation is a proper principle. If it is not, there is an end of the question. But assuming that it is a proper principle, are we to refrain from applying it, because it is going to be applied for the first time in 1890? Wrongs do not cease to be wrongs, simply because they are ancient wrongs. I would on this point only refer the Hon'ble Mr. Allen to that well-known work, Guilliver's Travels, from which he borrowed his allusion of extracting sunbeams from cucumbers. I confess I am not much pressed by the argument that, we should be doing a wrong to the debenture-holders if we accepted the principle of giving compensation for injuries done to private persons. I think that the owners of private wharves have their rights, which ought to be protected at any rate to the same extent as those of the debenture-holders. And we cannot overlook the rights of these owners out of tenderness for the interests of the debenture-holders (holders of merely floating securities as they are very properly called) who, we are told, invested their money on the faith of a tacit pledge that our statutes, like the laws of the Medes and Persians, are to remain unchanged throughout all time.

"Then, it is said that the Kidderpore Docks are likely to prove a white elephant. Many people, I think, besides the Hon'ble Mr. Allen, are of that

opinion. [Mr. Allen:—"I did not say that, that is my opinion. I said that, many people held that opinion."] Then I beg the hon'ble member's pardon. However, it has been said by a great many people that the new docks are likely to prove a white elephant. If such should unfortunately be the case, I do not see any reason why the owners of private wharves are to be singled out for the honour of feeding that rather expensive animal. I am not aware, nor has it been suggested, that there is any provision in any Act now in force which renders it absolutely unlawful for private individuals to have wharves for any of the purposes mentioned in section 96; and, as I have already said, it is only when a thing has been erected lawfully or is being used for a lawful purpose, that we propose to give compensation.

"But while agreeing with the Hon'ble Sir Henry Harrison as to the principle, I am unable to agree with him as to the measure of compensation which should be allowed in such cases. It has already been pointed out very forcibly by the Hon'ble Sir Charles Paul that, when you render a particular use of a particular building or work unlawful, you do not destroy the thing itself; and that the measure of compensation applicable in the one case cannot be properly applied in the other case.

"It has also been pointed out that, if the section is allowed to stand as it is, it must open a very wide door to all manner of claims being set up, of which some notion may be gathered from a perusal of compensation cases; and their name is legion, which appear in the English Law Reports. When owners fancy that their private rights are invaded or are unlawfully affected, they are seldom moderate in their demands. I have no reason to believe that the Indian claimant will be entirely free from this failing, which may not improperly be regarded as one of those touches of nature which make the whole world kin.

"The learned Advocate-General has suggested one way out of the difficulty. I venture to suggest another, which I think is likely, at least in my humble judgment, to meet the justice of the case. And what I propose is, that the last part of the section should run thus: 'shall entitle the owner thereof to sue for compensation for any depreciation in the value of such works in any case in which he would have been entitled to sue for and recover, &c.'

"This will have the effect of laying down a sufficiently definite rule, instead of the somewhat vague and indefinite measure of compensation allowed by the Hon'ble Sir Henry Harrison's amendment. It may be said

that we accepted that indefinite standard of compensation when we passed, on the last occasion, the amendment made to section 85. But, as has been already pointed out, the two cases are not precisely the same, nor are they even similar; and I think there can be no harm in laying down a different measure of compensation in cases in which you are only prohibited from putting your property to a particular use, from that which is applicable to cases in which the whole structure is absolutely destroyed.

"My objection, therefore, as I have already said, is not to the principle of the amendment, but only to the measure and extent of compensation to be conceded."

The Hon'ble SIR HENRY HARRISON said in reply:—"I have no wish to underrate the objections raised by the Hon'ble Sir Charles Paul and the Hon'ble Mr. Allen, but those objections are indefinitely weakened by the consideration that they do not, as the Hon'ble Dr. Rash Behary Ghose does, suggest any alternative course. Therefore, they must clearly be understood as willing to pass section 96 in its present form, and, if so, no objection raised by them can, for a moment, bear comparison with the weight of the objection to letting that section stand unamended. As the Hon'ble Mr. Nolan stated correctly at the last meeting, the section corresponding to section 85 in the old Act has never been used; whereas, the section corresponding to section 96 has been used on many occasions, in a manner which I and the Port Commissioners are quite prepared to admit has been harsh, if not more than harsh. Whenever the Commissioners have wished to get rid of a private wharf or jetty, what they have done is, not to remove or destroy it, but to open a wharf or jetty of their own in the neighbourhood, and then to say that the private wharf or jetty shall no longer be used.

"Therefore, it comes to this, that we have spent weeks of preparation and hours of discussion in altering the earlier section, which is practically of little importance; and then when we come to the section which is the real *fons et origo mali*, the retention of which would make the earlier amendment absolutely useless, we are to fold our hands and say *non possumus*. I must, speaking for myself, say that this would be playing with the remonstrances of the Chamber of Commerce. I do not think that, on careful reflection, the objections would prove nearly so strong as the Hon'ble Sir Charles Paul and the Hon'ble Mr. Allen represent, and I am not at all prepared to abandon the principle of

my amendment; but still it is desirable, in the light of this day's discussion, to examine its wording carefully and see if it can be safeguarded.

"The Hon'ble Mr. Moore authorises me to say that, he does not press for compensation for prospective tolls; and, if so, all those who accept the principle are substantially in accord. I therefore suggest that, instead of coming to any immediate vote, which will leave no option except to leave the section unaltered or to accept the amendment *verbatim* as it stands, section 96 may be referred back to the Select Committee for further consideration."

His Honour the President said:—"Before putting either question to the vote, I think it is worth while just to sum up to a certain extent what seems to me to be the various views now before the Council. In the first place, the hon'ble member in charge of the Bill, who is also a member of the Port Commission, considers that section 96, as it stands, is not sufficient without some provision for giving compensation on the same lines as that which is urged vehemently by the Chamber of Commerce and by the hon'ble member who, in this Council, represents their interests. Consequently, you have the member in charge of the Bill and the Port Commissioners' interests and the interests of the Chamber of Commerce, all at one upon this point.

"Then, when you come to debate the question, it seems to me at least—and I should have said so, until the Hon'ble the Advocate-General made his last remark—that there was a general concensus of opinion that something in the shape of compensation was necessary, or at all events was equitable. It might be, as I understood the Hon'ble the Advocate-General to say, merely paying compensation for the actual value of material wasted, or for the actual value of the jetty or of the erection. There are others who think there are some larger claims, but I am bound to say that the concurrence of legal opinion is so strong against the clause as proposed by my hon'ble friend to the left that, if that clause had to be put before the Council, I should have found myself obliged to vote against it.

"But there seems to me to be a concensus of opinion that something in the nature of compensation ought to be given; and it is also agreed that it should exclude any compensation for the future payment of fees which owners have not had to pay in the past, owing to the fact that they have been able to use their own jetties. Well, that brings us to a certain point in coming to an understanding; it clears the ground to some extent.

[*The President.*]

"The Hon'ble Dr. Rash Behary Ghose has been good enough to offer a suggestion which he thinks might meet the case; but, that, unfortunately, has come at the end of the debate, and it does not seem to me that there is any opportunity now of taking the opinion of the Council on a question of that kind without a little further consideration.

"I do not quite like the idea of referring a single section back to the Select Committee; because, if you refer this section back to the Select Committee, I do not see how you can exclude section 94, and that opens up rather a large field. I think I should prefer myself, instead of referring it back to the Select Committee, to adjourn the Council for one week for the consideration of the clause as suggested by the Hon'ble Dr. Rash Behary Ghose. That could be brought forward next week, or, possibly, some adaptation of it might be likely to meet the wishes of both parties. But if there is no better method—if I find nothing like an agreement is possible—I will adopt the view of the hon'ble the mover of the Bill, namely, to refer the Bill back to the Select Committee. It seems clear that you cannot pass the Bill to-day with this difference of opinion about it."

The further consideration of the section was postponed till the next sitting of the Council.

The Council adjourned to Saturday, the 1st March, 1890.

C. H. REILY,

Assistant Secretary to the Govt. of Bengal,
Legislative Department.

CALCUTTA;
The 27th February, 1890.

Reg. No. 888G—300—15-3-90.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 *and* 25 *Vic., Cap.* 67.

THE Council met at the Council Chamber on Saturday, the 1st March, 1890.

Present:

The HON'BLE SIR STEUART COLVIN BAYLEY, K.C.S.I., C.I.E., Lieutenant-Governor of Bengal, *presiding.*
The HON'BLE SIR CHARLES PAUL, K.C.I.E., *Advocate-General.*
The HON'BLE F. B. PEACOCK.
The HON'BLE P. NOLAN.
The HON'BLE T. T. ALLEN.
The HON'BLE SIR HENRY HARRISON, KT.
The HON'BLE SIR ALFRED CROFT, K.C.I.E.
The HON'BLE DR. MAHENDRA LAL SIRCAR, C.I.E.
The HON'BLE C. H. MOORE.
The HON'BLE H. PRATT.
The HON'BLE SHAHZADA MAHOMMED FURROKH SHAH.
The HON'BLE DR. RASH BEHARY GHOSE.

CALCUTTA PORT BILL.

The Hon'ble SIR HENRY HARRISON moved that the clauses of the Bill to consolidate and amend the law relating to the Port of Calcutta, and to the appointment of Commissioners for the said Port, be further considered for settlement in the form recommended by the Select Committee.

The Motion was put and agreed to.

The Hon'ble SIR HENRY HARRISON also moved for leave to withdraw the motion which he had laid before the Council at the last meeting, namely, that the following proviso be added to section 96 of the Bill:—

'Provided that any order made and published under this section which shall have the effect of rendering it unlawful to land or ship any goods out of, or into, any vessel at any wharf, quay, stage, jetty or pier made by any private person for the convenience of private

traffic shall entitle the owner thereof to sue for compensation, and to recover the same compensation, if any, that he would have been entitled to sue for and recover had the wharf, quay, stage, jetty or pier been removed, filled up, or destroyed under the provisions of section eighty-five.'

He said :—"As the discussion will take place on the wording of the new clause on the notice paper, I shall say very little in asking His Honour the President to put this motion to the Council. Following the course of the last discussion, and acting also upon a concession made by my hon'ble friend Mr. Moore, I ask leave to withdraw the amendment then proposed, in order to embody in a revised amendment the concession which has been made as well as a suggestion thrown out by the hon'ble and learned Advocate-General. For this reason, it would be better if the former amendment be allowed to be withdrawn, and the opinion of the Council taken upon the revised amendment."

The Motion was put and agreed to.

The Hon'ble SIR HENRY HARRISON then moved that, in line 14 of section 96 of the Bill, after the word 'way' the words 'and with the same sanction' be inserted.

He said :—"This amendment is hardly more than a formal one. At present, orders under section 96 can only be passed under the authority of the Government; but the Government having once passed an order declaring a wharf open, it is left to the Port Commissioners to pass the subsequent order prohibiting the use of any other wharf. There seems to be no objection to accept the wish of the Chamber of Commerce, that the same sanction be required for closing a wharf as is required for declaring a wharf open."

The Motion was put and agreed to.

The Hon'ble SIR HENRY HARRISON also moved that, between sections 96 and 97 of the Bill, the following section be inserted :—

'96A. Whenever any order made and published under sections ninety-four and ninety-six shall have the effect of rendering it unlawful to land or ship any goods out of, or into, any vessel at any wharf, quay, stage, jetty or pier lawfully made, erected, or fixed by any person for the convenience of private traffic, or to which a prescriptive right may have been acquired by possession of sixty years or upwards, such person, his representatives or assigns, shall be entitled to institute a civil suit for the award of compensation to him for the injury caused by the order hereinbefore mentioned :

'Provided that, in awarding such compensation, the Court shall not take into consideration any tolls, dues, rates or charges which the aforesaid person claiming compensation shall be liable to pay for using the wharf, quay, stage, jetty or pier provided by the Commissioners for public use:

'Provided also that it shall be lawful for the Commissioners, in lieu of closing any wharf, quay, stage, jetty or pier under either of the said sections, to allow the continued use thereof on payment of such scale of tolls, dues, rates and charges as may be agreed upon between the owners thereof and the Commissioners.'

He said:—"This amendment is in the form of a new section to be inserted at the end of section 96. First, I should say that the right to institute a suit for the award of compensation is now proposed to be applied to section 94 as well as to section 96. The only reason why the section was not originally proposed in that form was, that the persons who put forward the objection to section 96 did not extend their objection to section 94; and, naturally enough, the proposal took the form in which the objection was made by those who pressed it.

"In the wording of the earlier part of the new section, it has been deemed advisable to follow more closely the wording of the amendmont to section 85, which the Council have accepted.

"In our last meeting, the Hon'ble Mr. Moore, on behalf of those whom he represents, stated that the objection to charging the owners of wharves fees or rates, and not giving them compensation for any fees which they may be, in the future, bound to pay, would be abandoned. I assume that some members of this Council would entertain serious objections to any possibility of compensation being given for future fees; and it is, therefore, desirable to avail ourselves of that concession, and to formally embody in the new section a proviso to the effect that the Court is not to take into consideration any tolls, dues, rates or charges which the owner of the wharf, pier or jetty would become liable to pay in consequence of the closure of the wharf. It is, on the other hand, obviously intended that all other legal injury which such person may suffer should be taken into consideration.

"Again, the learned Advocate-General pointed out at our last meeting that the very best way of dealing with these wharves or jetties in general would be not to destroy or close them, but to allow them to be used on payment of a sufficient sum in lieu of the tolls, dues and charges to be paid for the use of the wharves or jetties of the Commissioners. I have ascertained that the only reason why the Port Commissioners have not followed this course is, because they thought they had not the power to do so, and that it is the

course they would prefer to follow; that is to say, if a private jetty comes in competition with the working of one of their wharves, they would prefer, instead of closing it, to say—here is your own wharf which you have constructed along with the necessary appliances, and therefore you ought to pay us something less than what we are entitled to charge for the use of wharves erected by us and the appliances provided by us. At the same time, as the tolls charged on jetties are not solely on account of the mere work of landing, but also in part defray the general expenses which, as trustees of the Port, we must incur to maintain the Port and the river in a navigable condition, therefore it is not fair that you should use your jetties free of all payment of tolls. So far from the Port Commissioners raising any objection to this proposal, I find that they consider it the very best and most convenient way of dealing with the matter. I therefore propose to enact clearly in the new section that, the payment of tolls in such cases may be a matter of agreement between the two parties.

"Obviously, we might have gone further and have made it obligatory on the Port Commissioners to do this, and I am not aware that the Commissioners would raise any violent objection to its being made obligatory; but there are some difficulties in the way of this, and practically the Port Trust will be very willing to work on this system: and as by the constitution of the new Commission the Chamber of Commerce will be largely represented, I think we may fairly rely on the reason and good sense of the Commissioners to work the section in a satisfactory and harmonious manner. I should therefore prefer framing the section in this optional manner.

"As regards the general form of the amendment, after thinking over all the objections which have been raised, I think the Council may, without any unreasonable apprehension as regards the consequences, adopt this amendment. The Port Commissioners themselves are unanimously in favour of going at least as far as this: many of them would be disposed to go further. The question was brought up at the last meeting of the Commissioners, and I am authorised to say that they are unanimously in favour of the section as far as it goes, though all do not think that it goes far enough, and have no grounds to apprehend any inconvenience resulting therefrom. I do not say that the Legislature is bound, in a matter of this kind, to follow the opinion of the Port Commissioners; they are bound to think for themselves, and to insert in this law what they think right and proper in every respect. Still, though it is our

duty to think for ourselves and not to adopt anything which we think wrong in principle, we cannot but allow weight to the fact that those most intimately concerned in the matter see no grounds to anticipate danger to their finances.

"Again, if the provisions of section 106 of the Bill are borne in mind, I think the Council will consider that there can be no practical danger of injury to the interests of the Port. By that section the Government has power, in the event of the income of the Port being insufficient, to require the Commissioners to introduce a scale of tolls on all goods landed anywhere in the port over and above what is charged on goods landed or shipped at any dock, wharf, &c., belonging to the Commissioners. So that in case of any deficiency arising in the income of the Port Trust, there is reserved a power, which never has been exercised, and, I believe, never will be, of imposing an additional scale of duties on all goods landed or shipped, whether on private wharves or on the Commissioners' wharves, or at the ship's sides in boats, or on the banks of the river. With such a power, I do not think it is possible to suppose that, the financial security of the Port can be jeopardised by passing a section such as is now proposed.

"It should, however, be pointed out to the Commissioners that if they exercise the power vested in them by the last clause of the amendment, they must be careful at the same time to make it clear in the agreement with the owner of the private wharf that, in the event of the Government exercising the power conferred upon it by section 106 of requiring tolls to be paid on *all* goods, the owner of the wharf will have to pay such tolls in addition to the rate agreed to be paid to the Commissioners for permitting the use of the wharf. Inasmuch as it is in the hands of the Commissioners in framing the agreement to secure the future payment of tolls under section 106 in addition to the rates agreed upon, it only requires due care on the part of the Commissioners, and it is unnecessary to propose any amendment upon section 106. I therefore move the amendment to section 96."

The Hon'ble MR. ALLEN said:—"The section which has now come before the Council proceeds on the assumption of the right of the Port Commissioners to a monopoly of the tolls, and is entirely free from the objection which appeared to me to militate against the amendment proposed on the last occasion; and to that extent I have no possible objection to it. But, as I said on a former occasion, to my mind the whole amendment is void of any

practical importance under present conditions, and I have therefore had considerable doubt whether I ought to make any remark on the present amendment. I entertain the same opinion as I did before, as to the unlikelihood of its ever being brought into operation. But even as a piece of theoretical fancy legislation, it appears to me that if I allow the Council to remain in ignorance of the objections of a legal nature which appear to me to arise, I shall be wanting in the duty expected from my office. And therefore I shall say a few words on the matter.

"A suggestion was thrown out by the hon'ble member on my left (Mr. Nolan) on the last occasion that, if the restriction, imposed under section 96 of the Bill, is to entitle the owner of a private wharf to receive compensation for the loss he sustains in respect of inland traffic, there is no reason why owners of wharves for sea-borne traffic should not be compensated when subjected to the similar restriction under section 94. It appears to me that the gentlemen who brought forward this objection have entirely forgotten the existence of a law, which makes an essential difference between sea-borne traffic and inland traffic. The proposal has a sort of superficial plausibility about it; but on referring to the Sea Customs Act, I think this plausibility will disappear.

"It may be roughly said that, every person who has water frontage is entitled to use his land for the purpose of loading and unloading vessels and boats which are engaged in the inland trade within the country, and to deprive him of that right, is to prevent him from utilising his land to the best advantage. Can that be said with reference to sea-borne traffic? Certainly not. In India, and in every civilised country which possesses a Custom House, the whole coast is surrounded by a legal wall, and the owner of land on the seashore who attempts to use his land for the purpose of landing or shipping sea-borne goods, exposes himself under section 167 of Act VIII of 1878, to a fine of Rs. 1,000 for every such attempt, and the confiscation of his goods. A man may own 100 miles of the sea frontage and not be able to use a single yard for this purpose. This at once marks a difference between sea-borne and inland traffic. It is only within an established port that sea-borne goods can be landed. The ports are the gates in that legal wall—the only legitimate entrance through which foreign goods may be brought into the country.

"But even within the port itself, ownership of a river frontage gives no right to establish a wharf. The establishment of wharves for sea-borne goods is in the Local Government. Section 11 of Act VIII of 1878 provides that, the

Local Government may, from time to time, declare the limits of their ports, appoint proper places therein to be wharves for landing and shipping of goods, &c.; while section 73 forbids the landing of goods at any place other than a wharf duly appointed.

"It therefore appears that the only legitimate places within a port at which sea-borne goods can be landed are, wharves which the Government has appointed; and, consequently, there can be no such right in any one to be compensated for a restrictive order under section 94, as there might be for a restriction imposed under section 96: and it was no doubt the knowledge of this essential difference, and not mere inadvertence, that caused the memorial of the commercial gentlemen to omit all allusion to section 94 and confine their claim to the restriction of section 96. Section 94 says that, when a sufficient number of docks, wharves, &c., shall have been erected for the landing and shipment of goods of all sea-going vessels resorting to the port, an order may be passed that, without the express sanction of the Commissioners, no goods shall be landed or shipped from any sea-going vessel within the port, save at such wharves, &c.; that is, a general order may be passed applicable to all ships.

"But section 92 makes a similar provision for a special order to each particular ship. It says:—It shall be lawful for the Commissioners to require the Conservator of the Port from time to time when there shall be room at such dock, wharf, &c., to order to come alongside of such dock, &c., for the purpose of being laden or unladen any sea-going vessel which shall not have commenced to discharge or take in goods. If section 94 is to be put into this amendment, why not section 92? Section 92 enables you to issue a particular order against any particular ship, and section 94 provides for the issue of a general order regarding all ships. They are exactly on the same footing. A series of special orders to each ship as it arrives will have the same result as a general order to all ships. If the amendment proposed entails any consequences to evade it, all the Commissioners have to do is, in each case to take particular action under section 92. I think, therefore, that we should either omit the reference to section 94, or section 92 should be added in this amendment. If this last be done, what will the position be? Shall the Port Commissioners, whenever they issue orders to bring a ship to their wharf under section 92, be obliged in each case to send round to the persons who own private wharves, if any such there be, and settle with each man the proportion he shall receive as compensation with respect to his particular wharf or jetty for the ship thus

withdrawn from the public wharf? It would be much wiser to limit the amendment, so as to apply only to restrictions issued under section 96.

"Then comes another point, namely, that inasmuch as the private right to tolls is given up and the structure is to be allowed to stand, what is there remaining to compensate? The first two paragraphs of the section seem practically reduced to a nullity, and the only part of this proposed section that can operate will be the last paragraph. If the amending section is cut down to that, I have no objection. I should go farther, and am prepared to say that, any person having a private wharf shall be entitled to continue to use it on paying the tolls to which goods landed at the public wharves are liable."

The Hon'ble MR. NOLAN said:—"I had not intended to say anything upon the present motion, as it was discussed at some length in another form at our last meeting; but, perhaps, I may be expected to make some reply to what has fallen from the last speaker as to the injustice of giving compensation to the owners of wharves for sea-going vessels. We all gladly recognise the propriety of the course adopted by the hon'ble member who is also the Remembrancer for Legal Affairs, in indicating objections founded on the existing law; and, in this instance, I only regret that he did not raise the point at an earlier period of the discussion, when we were engaged in examining section 85 of the Bill, which makes no distinction between wharves for sea-going and wharves for river vessels. In the present instance, he states that river frontage carries with it, *primâ facie*, the right to land goods brought from the interior, and deprivation of this right may properly be the subject of compensation; but that no one has any right, under the Sea Customs Act, to land sea-borne goods except at places specified under section 85 of that Act, and that, therefore, there can be no right to compensation. As far as I can make out, the section quoted, applies equally to landing from river vessels. The hon'ble member intimates dissent from this view, and no doubt he is better informed; but the matter is of little consequence, inasmuch as wharves for inland trade, whether they can be closed under the Indian Customs Tariff Act or not, can undoubtedly be closed under the Port Commissioners' Act, 1870. They are thus held on sufferance precisely as are the wharves for sea-going vessels, and no real distinction exists. In both cases the use of the river bank is subject to such conditions as the Legislature may, from time to time, impose.

"It is true that we should not give compensation for a wharf to a person who, under the Sea Customs Act, has no title to use it, and that is not proposed; but we are considering the case of those who have been, or may hereafter be, allowed under that Act to establish wharves, and in regard to them, there is no reason why they should be refused compensation for real loss occasioned by the orders of the Port Commissioners. Calcutta is not only a place of trade, but also a manufacturing town; and at many of the factories, it is really necessary that goods should be landed. These may come, as jute commonly does, by river, or as coal, by sea; in either case, it is often convenient to effect the landing on the premises. I see no reason why the wharves legally appointed under the Sea Customs Act for landing coal should be refused protection because the town is a port, and therefore a place in which it is of special importance that all commercial interests should be jealously guarded."

The Hon'ble MR. MOORE said:—"I support this amendment, but I have no further arguments to adduce in regard to it. As, however, I sincerely trust this will be the last opportunity I shall have of making a speech regarding the Port Bill, I am anxious to correct one or two errors that have arisen in the course of the discussion. The first was a slight one made by the Hon'ble Sir Charles Paul, in stating that I merely represented a small class of interested individuals, and not the commercial community at large; whereas I have been speaking on behalf of the Chamber of Commerce through its Committee, which is specially elected to include the whole community of commerce, and the memorial of the Chamber was unanimously adopted by that Committee. It is not only certain jute mills and such industries which are concerned and interested, and this is shown by the memorials submitted by other bodies and private persons, such as Mr. John Stalkart. On some occasions, however, I do find difficulty in defining whether I am speaking for myself only or for those I represent, and it arises in the Hon'ble Sir Henry Harrison's remarks regarding the concession made by the Chamber in withdrawing any claim under this section to compensation for payment of future tolls, &c. Now, as a matter of fact, I never specially put this point to the Chamber, but holding the opinion myself that such compensation should not be included, I never intended in the original amendment I drew that it should appear, and so was quite willing that a distinct provision debarring it should be made; but I may add this, that though I did not specially obtain the opinion of the Chamber on the

subject, I may, I think, guarantee that they will support the action that I have taken.

"In regard to the Hon'ble Mr. Allen's suggestion, that the final clause in the amendment under discussion should be made more binding, I think it might be imposing an inconvenient restriction on the Commissioners; and that, therefore, it had better be left in its present optional form than made obligatory.

"There is a very prevalent error abroad that, the enactment of this Bill and the special attention paid to sections 85 and 96, heralds a concerted plan to attack all down the line, and carry by assault every bit of private property on the banks of the Hooghly from the Jubilee Bridge to Diamond Harbour. Of course it is known to this Council, but it is well it should be thoroughly understood outside, that the Bill was merely introduced to consolidate, for convenience sake, the various Bills governing the port; and proof that the impression mentioned is devoid of foundation is found in the fact that, had the Commissioners or Government contemplated such a thing, they would have done it under the old Act which gives them full powers, and before a re-enactment took place, which in all possibility, (if not a certainty) might be changed as it has been to modify those powers.

"In conclusion, I wish to correct another error. It has in many quarters been thought that over these sections the Government has been distinctly obstructive, and in opposition to the views and principles held by commercial people on the commercial aspect of the question. I am very glad to publicly state that this is not my experience in the close connection I have had with this long discussion; and to acknowledge that, on the contrary, conciliation, which the Hon'ble Sir Henry Harrison recently claimed had been shown, is a correct description of the attitude Government has taken up in the matter. The error probably arises from the long delay that has preceded its settlement, which is easily explained. The views of those personally interested are naturally uppermost in their minds, but it takes long to engraft new views on the minds of others who, like Government officials, are not personally interested; and it would plainly not be right for these latter to hastily accept principles impressed upon them before being convinced that they are correct. That the desire to meet those interested has been shown, is testified to in the many modifications made in the sections under allusion by the member in charge of the Bill, each of which nearly has followed representations made and points

urged from my side of the question, culminating in the final amendment now before us, which I hope will be carried and close this long debate."

The Hon'ble DR. RASH BEHARY GHOSE said:—"I also support the amendment which has been proposed, and in doing so, I am bound to say that I am unable to accept a great deal of what has fallen from the Hon'ble Mr. Allen. The right of a riparian owner of using his property as a wharf for the loading and unloading of his goods has been recognised as a very valuable kind of private property. The question was elaborately discussed in the well-known case of Lyon *versus* the Fishmongers Company. The whole matter was there thoroughly discussed and the House of Lords came unanimously to the conclusion —and they are not always unanimous—that the right of a riparian owner to access to the river is a private right, and when it is interfered with, compensation ought to be given to the injured owner. The question was also discussed in a very recent case which came before the Privy Council on appeal, and their lordships were of opinion that, according to the French law which prevails in Lower Canada, a riparian owner has the same rights as the House of Lords in the case of Lyon *versus* the Fishmongers Company decided that such an owner had under English law. That being the French and the English law on the subject, we may take it for granted that, there can be no question of the existence of such rights.

"But it is said by the Hon'ble Mr. Allen, that the Sea Customs Act says nothing about any compensation. I have not had time to examine the Customs Act, but all I can say in answer to the objection founded on the absence of any clause for compensation is, that if it is not there it ought to be there. It is the old old argument that, you are now going to give compensation to private owners for the first time, although the Legislature has refused to recognise any such right ever since the year 1866, when power was given to the Justices of the Peace to take away private property without giving any compensation to the owner.

"It was said by the Hon'ble Mr. Allen on the last occasion that, in refusing to give any compensation, we are only following the lines on which the Indian Legislature has proceeded in other cases. Now, I confess, I should be extremely sorry to think that our Legislature has proceeded on a different basis from that on which all civilized Legislatures during the present century have proceeded in these matters. [Mr. Allen:—"My argument was, that legislation had

taken place before the wharves came into existence; they were subject to that legislation."] I beg the hon'ble member's pardon if I have misunderstood him. I was referring to what the hon'ble member said with regard to private ferries. Unless I am very much mistaken, it was said by the Hon'ble Mr. Allen that when the Government established a public ferry, although it might be done to the injury of the owner of a neighbouring private ferry, he was not entitled to any compensation. Now, turning to the present Ferries Act, I of 1885, section 17, I find it says—'Claims for compensation for any loss sustained by any person in consequence of a private ferry being taken possession of, or a new public ferry or subsidiary ferry, being established under section 6 or section 11, shall be enquired into by the Magistrate of the district in which such ferry is situated, who shall, with the approval of the Commissioner, award compensation to any person who may appear justly entitled thereto.' Then the section goes on to prescribe the mode in which compensation should be settled in such cases.

"It has been said that if compensation is given to persons who may be affected by the exercise of the power which is conferred on the Commissioners by section 94, we ought also to give compensation in the cases referred to in section 92. Now my answer to that objection is this, that section 92 does not directly affect any private property. It may be said, and it has been said, that although section 92 does not directly affect private property, it may indirectly do so. But the answer to that is, that the law does not allow compensation when the injury for which compensation is claimed is too remote. You can only give compensation where the injury is directly caused by the exercise of a particular power. It would open a very wide door, indeed, to all manner of claims for compensation if it was to be given for any injury, however indirect, however remote, which might be caused by the doing of a particular act. I accept the amendment which has been moved by the Hon'ble Sir Henry Harrison, because, I think, it embodies a principle to which, I think, no real exception can be taken; and it is certainly, as has been already pointed out, not open to the objections taken to the previous amendment.

"Before I sit down, I must beg to say a few words on some remarks which I know have been made with regard to the present measure. The Hon'ble Mr. Moore has told us of the somewhat unnecessary alarm which the appearance of this Bill created in the mercantile community; but the way in which their representations have been met, ought to satisfy them that their fears were

groundless. But our attitude of conciliation has, I regret, given rise to some hostile criticism. It has been said in certain quarters that, we have weakly yielded to the clamour of an interested party. Now that is, we all know, only a rhetorical mode of saying, we do not approve of your action. But what do these gentlemen really mean by saying, that we have weakly yielded to the clamour of an interested faction? Do they mean to say that when persons come before us with a grievance and represent that grievance to us, we should tell them we cannot listen to you, because you represent an interested party? You must send some person who has no interest in the matter to represent your grievance to us.

"Then, about the clamour. Do these gentlemen mean to say that, when persons with a grievance come before us, they should be told to speak with bated breath and whispering humbleness that they have no right to appeal to the public press in a spirit of fairness, or to go to counsel for opinion as to their own rights? Surely, we cannot do anything of the kind.

"Then, as regards our too weakly yielding to clamour. Do our critics mean to say that, although we may be satisfied that a grievance really exists, we must not make any concession because it would be weakly yielding to those who complain of the grievance? Well, if to concede what one believes according to his lights to be right and proper is weakness, I must confess that I share that weakness. And I do not at all envy the man who would not do what is shown or proved to be right, simply because it would be yielding or conceding what he was not at first prepared to concede. The question, therefore, is one simply of principle; and as I understand the matter, we are now generally agreed that, the owner of property who may be injured by the exercise of the powers conferred by this Act is entitled to compensation. Partial evil may possibly be universal good, but it will be small comfort to a private owner whose property is taken away to be told that, what is lost by him is gained by the public.

"On this point, I shall venture to read a passage from the Judgment of Lord Bramwell in the Hammersmith and City Railway Company *versus* Brand, which, I think, is very much to the point. The noble and learned lord says:—

'It is said that the railway and the working of it are for the public benefit, and therefore the damage must be done and be uncompensated. Admitting that the damage must be done for the public benefit, that is no reason why it should be uncompensated. It is to be remembered that that compensation comes from the public which gets the benefit. It comes

directly from those who do the damage, but ultimately from the public in the fares they pay. If the fares will not pay for this damage and a fair profit on the Company's capital, the speculation is a losing one, as all the gain does not pay all the loss and leave a fair profit. Either, therefore, the railway ought not to be made, or the damage may well be paid for. But further, though if it were the law and practice to do individuals a damage for the benefit of the public without compensation, no one in particular could complain when it happened to him, as everyone would know that he held his property subject to being deprived of it or having it injured when it suited the public; still such a law and practice would be highly inconvenient and mischievous.'

"But I have another and perhaps still higher authority. One of the greatest names in English jurisprudence, Jeremy Bentham, who, I believe, was the first to preach the gospel of Beccaria in England, and who cannot be suspected of any predilection for private rights when they come into competition with public rights in his theory of legislation; in speaking of the suppression of pensions and places without indemnity to the possessors, says:—

'The interest of individuals, it is said, ought to yield to the public interest. But what does that mean? Is not one individual as much a part of the public as another? This public interest which you introduce as a person is only an abstract term, but it represents nothing but the mass of individual interests. It is necessary to take them all into account, instead of considering some as all and the others as nothing. If it is a good thing to sacrifice the fortune of one individual to augment that of others, it will be yet better to sacrifice a second, a third, a hundred, a thousand, an unlimited number; for whatever may be the number of those you have sacrificed, you will always have the same reason to add one more. In one word, the interest of everybody is sacred, or the interest of nobody.'

"Then, he says:—

'Individual interests are the only real interests. Take care of the individuals, never molest them, never suffer any one to molest them, and you will have done enough for the public.'

"I refer to these authorities because a principle which one would have thought would never be seriously disputed, has been hotly disputed—if not by any of the hon'ble members here, at least by a portion of the outside public—and that is my only apology for troubling the Council with these authorities."

The Hon'ble SIR CHARLES PAUL said:—"As all parties are more or less agreed on this present amendment I do not propose to prolong the discussion. I shall only say a very few words. I believe there is a distinction between

the cases falling under section 94 and the cases falling under section 96, as pointed out by the Hon'ble Mr. Allen. But I do not think that, assuming there is a distinction between the sections, his objections dispose of the matter under consideration. The amendment proposed is, that if any order under section 94 affects a private person, he shall be entitled to compensation. If it be supposed that an order of this kind has no effect, it follows there will be no compensation. I think that is a sufficient answer to that objection.

"The Hon'ble Mr. Moore corrected me of an error into which, he says, I fell on the last occasion. If I committed an error I am glad to be corrected; but I must say in self-defence that I did not intend to deny, question or restrict the extensive representation which is centred in himself. But what I did say was, that in reference to compensation under section 96, the claim to compensation was being urged by the Hon'ble Mr. Moore, representing a very small number of people, namely, those who had jetties and wharves on the river banks for landing goods for their own purposes. That is all I intended to say. I am quite aware that he represents a very large section of the community, and it would not be fair of me to say anything derogatory of the high position which he fills in this Council. I am glad that he thinks we have arrived at a result which is entirely satisfactory to him and to those whom he represents. That must be a consolation also to other members of Council on this occasion. I think it eminently satisfactory that the labours of this Council have resulted in reducing propositions which embraced, what I may call for want of a better word, lawless elements into one or more propositions composed of lawful conditions."

The Hon'ble SIR HENRY HARRISON said in reply:—"As regards the necessity of applying the new section 96A to section 94, the Hon'ble Sir Charles Paul has just said, in far better language than I could have done, precisely what I wanted to say, namely, that although the Hon'ble Mr. Allen's argument is valid to a certain extent, it is not sufficiently valid to make it right and proper to exclude section 94. As regards section 92, I think an insufficient case has been made out, because that is the section under which the Commissioners can make a particular order with regard to a particular vessel when it has not commenced discharging cargo, and it is obviously for the purpose of regulating the traffic. It is obviously proper for the Commissioners to say we are now ready for a particular ship, and it must be brought to our jetty and not taken to a private

jetty to which it might have otherwise gone. That is very different from saying, that for all time the use of your jetty is closed.

"As regards making the last clause of the section obligatory, I have considered the matter carefully, and I think it would be inconvenient to do so. If we had done so, the owner would have had to pay the full tolls, which in some cases would be more than the Commissioners would wish him to do. They would wish to charge something less than the ordinary amount of tolls to compensate the owner for having put up the jetty, and using his own appliances and labour; and, therefore, it would not be fair to ask from him the same amount of tolls which would be paid by others who used the Commissioners' wharves and jetties.

"In conclusion, I must thank the Hon'ble Mr. Moore for what he has been so good to say, as regards the attitude of the Council in dealing with this matter. It is very discouraging to see that such extraordinary misapprehensions can gather force, especially when, as in this instance, the community which, we are informed labours under this misapprehension, is undoubtedly one of the most intelligent communities in India. Is it conceivable that the Bengal Legislative Council could consciously be indifferent to one of the most important interests in the country? Knowing, as the Council does, that the entire welfare of Calcutta, and in a large measure the welfare of Bengal, is bound up with the success of its commerce and trade, is it possible that they should wish to inaugurate a régime of hostile legislation? Now that we apparently have arrived at a satisfactory conclusion, I am bound to say that it is in a great measure due to our singularly good fortune in having to deal with the gentleman who represents in this Council the interests of the commerce of the port, and who has known so well how to reconcile the duty he owes to the interests which he represents, with that courtesy and conciliatory attitude which make the work of those who have to treat with him so much easier than it might otherwise have been."

The Motion was put and agreed to.

SUSPENSION OF RULES.

The Hon'ble SIR HENRY HARRISON also applied to the President for the suspension of Rules.

He said:—"After the satisfactory result at which we have just arrived, I think I may fairly be permitted to ask Your Honour to allow the Rules to

be suspended, for the purpose of passing this measure at this meeting of the Council. Although it is undoubtedly true that we have had three very important and useful discussions on one feature of the Bill, yet, I may say, on the one hand that, after the unanimous result which has been attained, so far as the discussion to-day is concerned, no one can say that we are proceeding with undue haste in giving it immediate effect by passing the Bill to-day; on the other hand, this measure, though a very large one, has, as regards all its other proposals and changes, received no opposition whatever. Under these circumstances, seeing that all the other features of the Bill have been accepted without amendment, and that this one point has been thoroughly considered and a satisfactory conclusion has been unanimously arrived at, and that further delay will serve no beneficial purpose, I ask Your Honour to suspend the Rules in order that the Bill may be passed at once, instead of coming here next week in order to go through the formality of passing it."

The President having declared the Rules suspended—

The Hon'ble SIR HENRY HARRISON moved that the Bill, as settled in Council, be passed.

The Motion was put and agreed to.

The Council adjourned *sine die*.

CALCUTTA;
The 7th March, 1890.

C. H. REILY,
Assistant Secretary to the Govt. of Bengal,
Legislative Department.

Reg No. 897G—300-20-3-90.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., Cap. 67.

THE Council met at the Council Chamber on Saturday, the 13th December, 1890.

Present:

The HON'BLE SIR STEUART COLVIN BAYLEY, K.C.S.I., C.I.E., Lieutenant-Governor of Bengal, *presiding*.
The HON'BLE SIR CHARLES PAUL, K.C.I.E., *Advocate-General*.
The HON'BLE H. J. S. COTTON.
The HON'BLE P. NOLAN.
The HON'BLE T. T. ALLEN.
The HON'BLE SIR HENRY HARRISON, KT.
The HON'BLE SIR ALFRED CROFT, K.C.I.E.
The HON'BLE DR. MAHENDRA LAL SIRCAR, C.I.E.
The HON'BLE C. H. MOORE.
The HON'BLE SHAHZADA MAHOMMED FURROKH SHAH.
The HON'BLE DR. RASH BEHARI GHOSE.
The HON'BLE RAJA RAMESHWAR SING BAHADUR.
The HON'BLE A. H. WALLIS.

NEW MEMBERS.

The HON'BLE MESSRS. COTTON and WALLIS took their seats in Council.

COURSE OF LEGISLATION.

HIS HONOUR the PRESIDENT said:—"Gentlemen, I am afraid you will consider that I have called you here to-day rather under false pretences when the ostensible cause is, that I am going to make a statement regarding the course of legislation during the Session. But, as a matter of fact, the statement that I have to make is, regarding the absence of any legislative business.

"There is on the notice paper a motion in regard to a Bill to repeal certain Obsolete Enactments. The Government of India in their Legislative Council, in the words of Sir Andrew Scoble, were clearing away dead matter from the Statute Book, and they desired that a similar course should be taken by us in

regard to the Bengal Statutes. The Hon'ble Mr. Allen has in hand and will move to-day for leave to introduce a Bill for that purpose, which will be proceeded with somewhat later after careful examination.

"Then there is another Bill which is on the anvil and which has been printed and is ready to be introduced. But, after some correspondence with the Secretary of State, we find that it will require certain alterations to be made, and it will probably take some little time. It is a Bill in connection with the amendment of the Court of Wards' Act.

"These are the only two Bills which I can say are at all ready to be laid before the Council at present.

"There is another Bill which has been printed and circulated and which some of the members may have seen in their capacity as members of the Associations consulted. It has reference to our Bengal Revenue Sale Law. It is a very important Bill and will require careful consideration. But the reports of all the bodies which have been consulted have not yet been received, and it will probably be some months before it will be ready to be laid before the Council.

"Beyond these Bills I have no work in hand that will require your attention. I am glad, however, of the opportunity of calling you together before my departure; first, that I might have the pleasure of introducing you to my successor, Sir Charles Elliott, and secondly, that I might express, before I go, my gratitude for the assistance you have given me, and my extreme satisfaction at the way in which business has always been conducted in this Council. It is a matter of great regret to me that I am leaving you, and that I shall have nothing more to say in this Council. The Presidency hereafter will devolve on my friend Sir Charles Elliott, and I am quite sure you will give him all the loyal assistance which you have given me in this Council."

OBSOLETE ENACTMENTS BILL.

The HON'BLE MR. ALLEN moved for leave to introduce a Bill to repeal certain Obsolete Enactments and to amend certain other Enactments.

He said:—"The Bill in question is a purely technical one, and I therefore can promise the Council that it will be without a particle of interest for any single member of it, unless it be the hon'ble jurist opposite, who may take the opportunity of favouring us with one of his exhaustive discourses on abstract principles.

In fact, however, the Bill is nothing more or less than a waste-paper basket, in which it is desirable to collect some of the litter which still encumbers the Bengal Code. I have already seen the provisions of the Bill, and I do not think it can be better described than the waste-paper basket of the Bengal Council."

The Motion was put and agreed to.

The Council was adjourned for one month.

CALCUTTA;
The 15th December, 1890.

C. H. REILY,
Assistant Secretary to the Govt. of Bengal,
Legislative Department.

Reg. No. 691G—300—22.12.90.